

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
)	
AT&T Corp. Emergency Petition for)	IB Docket No. 03-38
Settlements Stop Payment Order and Request)	
for Immediate Interim Relief)	
)	
and)	
)	
Petition of WorldCom, Inc. For Prevention of)	
“Whipsawing” On the U.S.-Philippines Route)	
)	

APPLICATION FOR REVIEW

Lawrence W. Secrest, III
Patricia J. Paoletta
Suzanne Yelen
Heather O. Dixon
Kyong H. Wang
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

Counsel for Globe Telecom Inc.

April 9, 2003

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
I. BACKGROUND	2
A. Globe And The Philippine Telecommunications Industry	2
B. The Termination Rate Disputes Between AT&T And Philippine Carriers	3
C. Proceedings On The AT&T Petition.....	5
D. Bureau Order Granting The AT&T Petition.....	6
E. The March 12, 2003 NTC Order.....	7
II. QUESTIONS PRESENTED	8
III. THE INTERNATIONAL BUREAU ERRED IN FINDING THAT GLOBE WHIPSAWED AT&T.	8
A. The Bureau Capriciously Expanded The Definition Of “Whipsawing.”.....	8
B. Globe Did Not Act In Concert With Other Philippine Carriers.....	10
C. Globe Alone Could Not Engage In Whipsawing.....	13
IV. THE INTERNATIONAL BUREAU ACTED WITHOUT JURISDICTION AND/OR OUTSIDE THE BOUNDS OF ITS DELEGATED AUTHORITY, AND COMMITTED PREJUDICIAL PROCEDURAL ERROR.	13
A. The Bureau Acted Without Jurisdiction And/Or Exceeded The Bounds Of Its Delegated Authority.	14
B. The Bureau Erred In Resolving Disputes Between Private Parties In A Rulemaking Proceeding.	17
C. The Bureau Failed To Follow The Necessary Procedures For Those Aspects Of The Proceeding Appropriately Addressed In A Rulemaking.	18
D. The Bureau Lacked Jurisdiction And Acted Contrary To Due Process In Ruling On Matters Not At Issue And Granting Relief Not Prayed For In The AT&T Petition.	20
E. The Bureau Failed To Engage In Reasoned Decisionmaking.	21
V. THE INTERNATIONAL BUREAU ACTED CONTRARY TO THE PUBLIC INTEREST.	23
VI. REQUEST FOR RELIEF	25

EXECUTIVE SUMMARY

The International Bureau (“Bureau”) erred in finding that Globe Telecom Inc. (“Globe”) whipsawed AT&T Corp. (“AT&T”) and WorldCom, Inc. (“WorldCom”) and ordering all facilities-based U.S. carriers to suspend payments to Globe until it fully restores all of AT&T’s circuits. The Bureau capriciously expanded the definition of “whipsawing” to encompass the conduct of non-dominant carriers in a competitive market, without evidence of anticompetitive collusion or retaliation, and without regard for the presumption established in the FCC *Benchmark Order* that below-benchmark rates are just and reasonable. In so doing, the Bureau acted contrary to the public interest in worldwide communications service.

AT&T did not submit any evidence that supported its allegation of collusion amongst or retaliation by six Philippine carriers, including Globe. The agreements to which AT&T pointed and upon which the Bureau relied are not international termination agreements, but rather domestic interconnection agreements between Philippine fixed line, cellular mobile telephone systems (“CMTS”) and international gateway facilities (“IGF”) providers. Globe explained the nature of these agreements to the Bureau and submitted evidence that it acted independently of the Philippines Long Distance Telephone Company (“PLDT”) and the other Philippine carriers. Globe also clarified that these domestic rates are not the international termination rates proposed by Globe, and reminded the Bureau that U.S. antitrust law dictates that identical rates alone cannot justify a finding of collusion. Furthermore, Globe explained that the uniform domestic interconnection rates are attributable to the combination of build-out conditions placed on licenses to operate IGFs and CMTS and the Philippine regulator’s requirement that interconnection charges be non-discriminatory. In addition, Globe noted that it and the other accused Philippine carriers did not each propose the same rate increase to AT&T. Not only did Globe offer U.S. carriers different rates than PLDT and Bayan Telecommunications Co.

(“BayanTel”), it also continued to terminate AT&T on-net traffic long after PLDT blocked all AT&T traffic. Finally, as the Bureau itself acknowledged, Globe lacks market power in the Philippines and thus could not have whipsawed AT&T on its own. In sum, in finding that Globe and the other Philippine carriers whipsawed AT&T, the Bureau disregarded substantial evidence in the record to the contrary. In so doing, it violated its duty of reasoned decision making.

The Bureau also acted without jurisdiction and even assuming *arguendo* it had jurisdiction, exceeded the bounds of its delegated authority by considering new and novel arguments that whipsawing could occur on a competitive route and by finding that the below-benchmarks rates proposed by Globe and the other Philippine carriers were unjust and unreasonable, contrary to the presumption of reasonableness established in the *Benchmarks Order*. Both of these issues are better addressed in the Federal Communications Commission’s (“FCC” or “Commission”) pending rulemaking proceeding regarding reform of the International Settlements Policy (“ISP”) and the International Simple Resale (“ISR”) policy.

The Bureau made a number of procedural errors, as discussed extensively in Appendix 1. It adjudicated a dispute between private parties in the context of a rulemaking proceeding and redefined the type of behavior that constitutes whipsawing without providing interested parties adequate notice and an opportunity to comment. Similarly, the Bureau overturned the presumption that below-benchmarks rates are just and reasonable, again without notice and comment. The Bureau also ruled on matters not even at issue and therefore lacked jurisdiction to issue a stop payment order covering receivables incurred under an undisputed rate agreement or to revert the Philippines, an ISR-approved route, to the ISP. These actions not only violated administrative law but also were inconsistent with due process and good public policy.

For all of these reasons, the Bureau’s Order is riddled with errors and must be overturned.

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
)	IB Docket No. 03-38
AT&T Corp. Emergency Petition for)	
Settlements Stop Payment Order and Request)	
for Immediate Interim Relief)	
)	
and)	
)	
Petition of WorldCom, Inc. For Prevention of)	
“Whipsawing” On the U.S.-Philippines Route)	
)	

APPLICATION FOR REVIEW

Pursuant to § 1.115 of the Commission’s rules, Globe hereby applies for review of the Order (dated March 10, 2003) adopted by the International Bureau.¹ Because of the unusually severe impact of the Bureau’s decision on U.S. carriers, Globe and other Philippine carriers and consumers, Globe requests expedited review of the Bureau Order. Globe urges the Commission to reverse the Bureau Order on the grounds that it is substantively erroneous and that the proceeding on which it is based was procedurally defective.

¹ *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, Order, IB Docket No. 03-38, DA 03-581 (rel. Mar. 10, 2003) (“*Order*”). Globe enters a limited appearance before the Commission solely for the purpose of challenging the Bureau’s findings that Globe whipsawed AT&T and WorldCom. As a carrier licensed to provide service in the Philippines that provides no services originating or terminating in the United States, Globe is not subject to the regulatory jurisdiction of the FCC. *See* 47 U.S.C § 152. *See also Cable & Wireless, P.L.C. v. FCC*, 166 F.3d 1224, 1229 (D.C. Cir. 1999) (“*C&W Order*”) (finding that “[t]he Commission claims no authority to directly regulate foreign carriers”) (quoting *International Settlement Rates*, 12 FCC Rcd 19806, 19951 (1997) (Report and Order) (“*Benchmarks Order*”)), *aff’d sub nom., Cable & Wireless, P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

I. BACKGROUND

A. Globe And The Philippine Telecommunications Industry

Globe is a licensed telecommunications provider in the Philippines. It operates mobile and fixed local exchange services, providing both domestic and international call and messaging services. Globe is one of six licensed Philippine CMTS operators. It has a small fixed local network spread out over six licensed service areas. There are at least 64 other regional fixed line operators in the Philippines. Philippine teledensity stands at five percent.

In 1993, then President Fidel V. Ramos issued an Executive Order opening the market for international services to additional competition and requiring all IGF operators to provide local exchange service in unserved and underserved areas.² The National Telecommunications Commission (“NTC”) issued implementing regulations, which expanded the local service obligations to CMTS operators.³ IGF operators were required to build a minimum of 300,000 local exchange lines and CMTS operators were required to build a minimum of 400,000 local exchange lines. The NTC required each IGF and CMTS operator to build a specified number of local exchange lines and to build these lines in rural parts of their service areas. Ultimately, this created a number of new entrants to the local exchange market with similar cost structures.⁴ This is to be expected where, as here, entrants have built out roughly the same number of local exchange lines with roughly comparable costs over roughly the same time.

² Philippine Executive Order No. 109, *Policy to Improve the Provision of Local Exchange Carrier Service* (dated July 12, 1993), attached as Exh. 1.

³ NTC Memorandum Circular No. 9-7-93, *Implementing Guidelines on the Provisions of E.O. 109* (dated Sept. 17, 1993), attached as Exh. 2.

⁴ These entrants have higher cost structures for local exchange services than PLDT. As the incumbent and the only carrier authorized to provide local exchange service throughout the Philippines, PLDT benefits from economies of scale that others have not achieved.

Interconnection for NTC-licensed carriers has been mandated since 1990.⁵ In 2000 and 2002, the NTC issued Memorandum Circulars (“MC”) establishing a new regulatory framework for interconnection and guidelines for interconnection charges. Under this framework, carriers must “provide interconnection at cost-based charges in a manner sufficiently unbundled” and must submit interconnection agreements to the NTC for approval.⁶ Further, interconnection charges must be non-discriminatory.⁷

In December and January 2003, Globe entered into a number of agreements with other Philippine carriers for interconnection to the carriers’ local and CMTS networks. While Globe separately negotiated each of these domestic interconnection agreements, each agreement sets forth the same interconnection charges. This uniformity is necessary to satisfy Globe’s non-discrimination obligation.

B. The Termination Rate Disputes Between AT&T And Philippine Carriers

Globe, as an IGF operator and provider of international long distance service, has agreements with 34 major foreign correspondents. Globe’s existing agreements with AT&T and several U.S. and foreign correspondents regarding termination of switched voice traffic were due

⁵ Municipal Telephone Act of 1989, Republic Act No. 6849 (adopted Feb. 8, 1990), attached as Exh. 3.

⁶ NTC Memorandum Circular, No. 14-7-200, *Implementing Rules and Regulations (IRR) for the Interconnection of Authorized Public Telecommunications Entities*, §§ 10(a), 14 (IV), attached as Exh. 4. The NTC may disapprove an interconnection agreement because, among other things, “the compensation scheme or interconnection rates or charges agreed upon are unreasonable, *not cost-based* and/or discriminatory.” *Id.* at § 14(IV)(e) (emphasis added).

⁷ The NTC defines this term to mean that (1) “the charges offered by a [carrier] to other [carriers], should be the same for all [carriers] where they are utilizing the same infrastructure and functionality” and (2) “[t]he charges that a [carrier] applies to other [carriers] for equivalent Interconnect Services ... must not be higher than the internal transfer prices for Interconnect Services ... applied by it to its own internal businesses.” NTC Memorandum Circular No. 09-07-2002, *Implementing Rules and Regulations (IRR) for Specific Guidelines for Competitive Wholesale Charging for Interconnect Services*, §§ 3(b), (c) (dated July 31, 2002), attached as Exh. 5.

to expire on various dates from December 2002 through January 2003. Globe proposed increased international termination rates of \$0.16 per-minute for calls terminating to its CMTS network and \$0.12 per-minute for calls terminating to its fixed network to all of its foreign correspondents, including AT&T. PLDT and other Philippine carriers also proposed different increased termination rates to AT&T and their other foreign correspondents.⁸ As of the date of this filing, 31 of Globe's 34 foreign correspondents have agreed to Globe's proposed rate increase.

PLDT commenced negotiations for a new rate in May 2002, but could not come to any agreement with AT&T.⁹ Globe first notified AT&T of its new termination rates on December 26, 2002. AT&T flatly refused to accept Globe's new rates but did not make any counterproposal. Globe met with AT&T in December 2002 and January 2003 to discuss the cost rationale for the rate increases. AT&T continued to refuse to accept the new rates but again did not make any counterproposal to Globe or respond to Globe's follow-up letters. In fact, Globe did not receive a counterproposal from AT&T until after AT&T filed its Petition.¹⁰ AT&T conducted itself in much the same way in response to other Philippine carriers' proposals.¹¹

⁸ Notably, PLDT proposed higher rates than Globe. Globe only proposed rates that would ensure it did not lose money in terminating AT&T's traffic, while PLDT proposed higher rates that included mark-ups. *See Globe Ex Parte* at 2, IB Docket No. 03-38 (filed Mar. 6, 2003).

⁹ PLDT Opposition at 7, IB Docket No. 03-38 (filed Feb. 21, 2003).

¹⁰ Globe Opposition at Exh. 3, IB Docket No. 03-38 (filed Feb. 21, 2003).

¹¹ For example, "AT&T never showed any willingness ... to negotiate with Digitel," "never submitted any negotiable counter-proposal" and "never went back to Digitel after receiving [its] notice of increase of termination rates." Digital Telecommunications Philippines, Inc. Comment, IB Docket No. 03-38, at 4-5 (filed Feb. 21, 2003) ("Digitel Comments"). BayanTel also stated that "AT&T has not shown interest in negotiating termination rates with BayanTel." BayanTel Position Paper at 1, IB Docket No. 03-38 (filed Feb. 28, 2003). While AT&T did meet with PLDT after PLDT first proposed rate increases in May 2002, AT&T refused to discuss rate increase. PLDT Opposition at 7-8.

C. Proceedings On The AT&T Petition

Rather than negotiate with Globe, AT&T simply waited until February 1, 2003 when its switched voice agreement with Globe expired. On that date, Globe became obligated to pay other Philippine carriers new higher domestic interconnection charges and thus faced losses of approximately \$0.04 per minute if it continued to terminate AT&T's off-net traffic. Under these circumstances, Globe stopped terminating AT&T's off-net traffic. Facing similar circumstances themselves, BayanTel and Digital Telecommunications Philippines, Inc. ("Digitel") took similar actions, while PLDT stopped terminating all AT&T traffic. AT&T then went straight to the FCC seeking a stop payment order. On February 7, 2003, AT&T filed a Petition alleging whipsawing by Globe and five other Philippine carriers with which it refused to negotiate and requesting an order that all U.S. carriers suspend payments to these carriers. A number of Philippine carriers, including Globe, responded to the AT&T Petition. These carriers denied AT&T's whipsawing allegations and submitted substantial exculpatory evidence.

On January 31, 2003, the NTC ordered the Philippine carriers to continue negotiations and Globe complied.¹² A week later, after the expiration of Globe's switched voice rate agreement with AT&T, the NTC again encouraged carriers with no existing and effective agreements with foreign carriers to negotiate interim agreements for the continuity of service.¹³ The NTC also clarified that it found nothing unreasonable in the rates proposed by the carriers: "Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of \$0.19/minute..." and well below the ITU suggested target settlement rate of \$0.238 per

¹² NTC Memorandum Order, *Philippine Long Distance Company (PLDT), SMART Communications Inc., GLOBE Telecom Inc., BAYAN Telecommunications Company* (Jan. 31, 2003), attached as Exh. 6.

¹³ NTC Memorandum Order, *Maintaining Status Quo of Circuits in the Interest of Public Service and National Welfare* (Feb. 7, 2003), attached as Exh. 7.

minute.¹⁴ The NTC took the additional step of writing to the FCC to state that the proposed rate increase was “fair and reasonable” and accepted by most overseas carriers.¹⁵ The NTC expressed its understanding that, absent any provisional or interim agreement during the course of bilateral negotiations, “there would be termination of service between the parties.”¹⁶

D. Bureau Order Granting The AT&T Petition

Disregarding all exculpatory evidence and the findings of the NTC, the Bureau found that Globe, Smart Communications Inc. (“Smart”), Subic Telecom (“SubicTEL”), BayanTEL and Digitel had “engaged in concerted action, along with PLDT, to ‘whipsaw’ U.S. carriers into the same rate increase.”¹⁷ In support of this finding, the Bureau noted that each of these carriers “demanded identical increased rates for terminating international calls destined for the Philippines to be effective on the same day, February 1, 2003, as PLDT demanded.”¹⁸ The Bureau also pointed to the domestic interconnection agreements which, following AT&T’s lead, it mischaracterized as “interconnection agreements pursuant to which [the Philippine carriers] all agreed to increase their termination rates on international calls.”¹⁹ Finally, the Bureau noted that, “[o]n or shortly after February 1, 2003, all six Philippine carriers, including PLDT, began blocking all or a substantial part of their circuits with AT&T.”²⁰

¹⁴ *Id.*

¹⁵ Letter from A. Borje and K. Heceta, National Telecommunications Commission, to Commissioners, FCC (Feb. 26, 2003), attached as Exh. 8.

¹⁶ *Id.*

¹⁷ *Order*, ¶ 12. The Bureau also found that PLDT, a dominant carrier, had engaged in whipsawing on its own by threatening to block AT&T’s traffic and actually taking such steps in an attempt to force AT&T to agree to its proposed rate increases. *Id.*

¹⁸ *Order*, ¶ 12.

¹⁹ *Order*, ¶ 12.

²⁰ *Order*, ¶ 12.

The Bureau ordered all U.S. carriers providing direct facilities-based service on the U.S.-Philippines route to immediately suspend all payments for termination services provided by PLDT, Globe, BayanTel, Digitel, Smart, and Subicel. The Order therefore reached payments owed to Globe by AT&T for traffic terminated under the previously agreed and undisputed per-minute rates of \$0.08 (for fixed line terminations) and \$0.12 (for CMTS terminations). Worse yet, the Bureau ordered additional measures not even requested by AT&T. Specifically, it removed the U.S.-Philippines route from the list of ISR approved routes and required compliance with the ISP by all U.S. facilities-based carriers directly exchanging traffic with the Philippine carriers listed in the Order.

E. The March 12, 2003 NTC Order

In response, on March 12, 2003, the NTC directed all affected Philippine carriers to “[n]ot...accept terminating traffic via direct circuits from US facilities- based carriers who do not pay Philippine carriers for services rendered.”²¹ The NTC stated that “[b]y ordering a suspension of all payments, whether for services already rendered, or services yet to be ordered, the Abelson Order undermines the very foundation of the viability and efficiency of the Philippine telecommunications industry.”²² The NTC also declared “the actions taken by the Philippine carriers in compliance with the domestic law on interconnection and non-discriminatory charges do not constitute concerted anti-competitive action.”²³

²¹ NTC Memorandum Order, *Philippine Long Distance Company (PLDT), SMART Communications Inc., GLOBE Telecom Inc., BAYAN Telecommunications Company, Other Public Telecommunications Entities (PTEs) Similarly Situated* (Mar. 12, 2003), attached as Exh. 9.

²² *Id.*

²³ *Id.*

II. QUESTIONS PRESENTED

- (1) Whether the Bureau erred in finding Globe guilty of whipsawing.
- (2) Whether the Bureau (a) exceeded the bounds of its delegated authority and/or (b) committed prejudicial procedural error by adjudicating a dispute between private parties in the context of a rulemaking by ruling on issues not in dispute and granting relief not requested by any party without or in excess of its jurisdiction and contrary to due process, and by failing to engage in reasoned decision making.
- (3) Whether the Bureau acted contrary to the public interest.

III. THE INTERNATIONAL BUREAU ERRED IN FINDING THAT GLOBE WHIPSAWED AT&T.

The Bureau, unreasonably expanding the definition of “whipsawing,” concluded that Globe and five other carriers whipsawed AT&T and WorldCom. The Bureau could not reasonably have concluded based on the evidence before it that Globe and the other Philippine carriers had engaged in whipsawing.²⁴ The evidence demonstrates that Globe and the other Philippine carriers did not collude to raise the termination rates charged to AT&T and that Globe did not retaliate against AT&T. Further, the Bureau itself recognized that Globe could not whipsaw AT&T on its own.

A. The Bureau Capriciously Expanded The Definition Of “Whipsawing.”

The Bureau expanded the definition of “whipsawing” to an absurd degree. First, the Bureau found for the first time that whipsawing could occur in a competitive environment where alternative means of terminating calls existed. Under FCC precedent, “in order for foreign carriers to engage in ‘whipsawing’ behavior effectively against U.S. carriers, there must be no

²⁴ See *United States v. Baker Hughes Inc.*, 908 F.2d 981, 983 (D.C. Cir. 1990) (holding that the ultimate burden for proving anticompetitive conduct lies with the government at all times) (citing *Kaiser Aluminum & Chem. Corp. v. FTC*, 752 F.2d 1324, 1340 & n.12 (7th Cir. 1981)).

available, alternative means of terminating U.S.-international traffic in the foreign market.”²⁵

Here, there are nine IGFs in the Philippines, six of which the Bureau found had whipsawed AT&T and WorldCom.²⁶ Further, the FCC’s whipsawing policy is designed to address competitive distortions resulting from a lack of competition the foreign end of a U.S.-international route. In affirming the *Benchmarks Order*, the D.C. Circuit recognized this:

Although the U.S. telecommunications industry has become more competitive, the industry remains non-competitive in much of the rest of the world. This competitive differential has two important consequences First, in negotiating settlement rates, foreign monopoly carriers can pit competing U.S. carriers against one another, exploiting the fact that U.S. carriers unwilling to pay settlement rates demanded by foreign carriers will lose business on those routes to higher-bidding domestic competitors. Known as “whipsawing,” this practice drives up the price of termination services to levels that exceed not only actual costs, but also the price that foreign carriers charge their own subscribers for comparable local services. Through excessive net settlement payments to foreign carriers, U.S. carriers and their U.S. customers effectively subsidize government-owned telephone services in foreign countries.²⁷

Here, the Bureau found whipsawing in the absence of a government, let alone private, monopolist and where three other Philippine IGF operators could have also terminated AT&T’s traffic.²⁸

²⁵ See *International Settlements Policy Reform; International Settlement Rates*, Notice of Proposed Rulemaking, 17 FCC Rcd 19954, 19970 (2002) (“*ISP Reform NPRM*”).

²⁶ See Digital Comments at 9 (noting that “[t]he Philippine Telecommunications Industry is heavily deregulated” and that “there are at least nine (9) international gateway facility (IGF) operators”).

²⁷ See *C&W Order*, 166 F.3d at 1227.

²⁸ To defend its expansion, the Bureau points out that the FCC has *noted* the “possibility of anticompetitive behavior resulting from *several* foreign carriers acting collectively in a foreign market.” *Order* at n. 38 (emphasis added). This noted possibility was not determined in any actual enforcement proceeding with facts on the record. Moreover, in order for the “possibility of anticompetitive behavior” to exist in a highly competitive market, a large number of carriers must coordinate to seek the same unreasonable termination rate, leaving the U.S. carrier with *no* alternative means for terminating its calls at a reasonable rate.

Second, while the Commission previously has found only monopolists and dominant carriers to have engaged in whipsawing,²⁹ the Bureau found here that non-dominant carriers could whipsaw U.S. carriers through concerted action. Finally, before this Order, the Commission had stated, “‘whipsawing’ tends to exist in the negotiation stage prior to the filing of service agreements or rate modifications by U.S. carriers with the Commission.”³⁰ However, AT&T flatly refused to negotiate with Globe and allowed its earlier switched voice rate agreement with Globe to expire, but alleged that the expired rates should continue during negotiations, in which it was not engaged. The Bureau ignored the facts of this case, blindly accepting AT&T’s characterization of industry practice and interpretation of the switched voice agreement with Globe without independently reviewing the agreement.³¹

B. Globe Did Not Act In Concert With Other Philippine Carriers.

Assuming *arguendo* that whipsawing can occur when several carriers collude to raise international rates and then retaliate against any U.S. carrier that refuses to accept the rate increase, the record before the Bureau does not support its conclusion that Globe and other Philippine carriers together whipsawed AT&T.³² First, AT&T and the Bureau incorrectly rely on a Philippine SEC filing made by Globe,³³ which they characterized as reporting “interconnection

²⁹ See, e.g., *AT&T Corp., MCI Telecommunications Corp., Sprint LDDS WorldCom Petition for Waiver of International Settlement Policy to Change the Accounting Rate for Switched Voice Service with Peru re: Application for Review*, Order on Review, 14 FCC Rcd 8318, 8329-30 (1999); *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina re: Application for Review*, Order on Review, 14 FCC Rcd 8306, 8317 (1999).

³⁰ See *ISP Reform NPRM*, 17 FCC Rcd at 19976 & n. 92.

³¹ Order, ¶ 15.

³² BayanTel Position Paper at 1; PLDT Opposition at n. 13; PLDT *Ex Parte* at 1, IB Docket No. 03-38 (dated Feb. 27, 2003).

³³ Order, ¶ 12.

agreements pursuant to which they all agreed to increase their termination rates on international calls” and as concrete evidence of collusive behavior among the carriers.³⁴ As Globe, PLDT and ABS-CBN Telecom North America, Inc. previously clarified, the SEC filing simply disclosed new domestic interconnection agreements that are “merely the instrument by which competitive carriers operating in different segments of the market” agree to terminate traffic.³⁵ The filing, which only addressed domestic interconnection rates, could not reasonably be interpreted to reflect any collusion among the Philippine carriers with respect to international termination rates.

Second, AT&T and the Bureau make much of the fact that the Philippine carriers all set the same domestic interconnection rates. However, the domestic agreements are not evidence of concerted conduct in setting international termination rates. Indeed, proof of parallel business behavior does not conclusively establish that an antitrust violation has occurred.³⁶ Further, Globe has explained that it is required to set non-discriminatory interconnection rates. Given the comparable costs of the local networks operated by Globe and other new entrants, compliance with this requirement has led to uniform domestic interconnection rates.

Third, the Bureau accepted and relied upon AT&T’s incorrect statement that the carriers had “demanded identical increased rates for terminating international calls destined for the Philippines to be effective on the same day.”³⁷ In fact, there were variations in the increased per-minute rate proposed by the carriers documented on the record.³⁸ PLDT, Globe and BayanTel

³⁴ *Order*, ¶ 12.

³⁵ Globe Opposition at 5; PLDT Opposition at 6 & n.13; ABS-CBN Telecom North America, Inc. Reply Comments at 7, IB Docket No. 03-38 (filed Feb. 27, 2003) (“ABS-CBN Reply”).

³⁶ *Theatres Enterprises v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954).

³⁷ *Order*, ¶ 12.

³⁸ PLDT Opposition at Exh. 9; Globe *Ex Parte* at 2 (Mar. 6, 2003); ABS-CBN Reply at 2.

proposed per-minute rates of (1) \$0.125³⁹, \$0.120, and \$0.125 for fixed on-net traffic, respectively; (2) \$0.145, \$0.125, and \$0.125 for fixed off-net traffic, respectively; (3) \$0.175, \$0.160, and \$0.165 for mobile on-net traffic, respectively, and (4) \$0.185, \$0.165, and \$0.165 for mobile off-net traffic, respectively. The Bureau's only basis for even alleging collusive conduct based on the record is the uniformity of domestic interconnection rates, which Globe has explained resulted from Philippine entry and interconnection policy.

Finally, the Bureau erroneously found that Globe, along with other non-dominant carriers, retaliated against AT&T. The Bureau acknowledged in its Order that Globe had blocked only AT&T's off-net traffic but found that this did "not erase the fact that Globe is retaliating against AT&T for refusing to accede to a rate increase and is engaged in 'whipsawing.'"⁴⁰ Rather than acknowledging that for every off-net minute terminated, Globe would lose \$0.04, the Bureau chose erroneously to characterize Globe's actions as retaliatory. Not only did the Bureau fail to explain how it could find that Globe had acted in bad faith by continuing to terminate AT&T's on-net traffic without any expectation of compensation and without any contractual obligation to do so, it failed to address the assertions of BayanTel and Digitel that they too stopped terminating AT&T's off-net calls.⁴¹

³⁹ Earlier, on December 13, 2002, PLDT proposed slightly different rates for fixed traffic. PLDT proposed an on-net fixed prepaid rate of \$0.12, on-net fixed post paid rate of \$0.125 and off-net fixed prepaid rate of \$0.14. PLDT Opposition at Exh. 2.

⁴⁰ *Order*, ¶ 12.

⁴¹ Digitel Comments at 6; ABS-CBN Reply Comments at 7. These carriers indicated that they had only stopped terminating AT&T's off-net traffic since under the domestic interconnection agreements by which the local exchange and CMTS carriers charge IGF operators \$0.12 and \$0.16 respectively and would lose \$0.04 per minute for terminating AT&T's off-net traffic to another local exchange or CMTS carrier. *See* BayanTel Position Paper at 1; Digitel Comment at 5; Globe Reply at 6, IB Docket No. 03-38 (filed Feb. 27, 2003).

C. Globe Alone Could Not Engage In Whipsawing.

There is also no evidence establishing that Globe alone could have whipsawed AT&T. Under well-established FCC precedent, only a monopolist or dominant carrier alone can whipsaw a U.S. carrier. However, the Bureau correctly found that Globe does not have market power.⁴² Globe has an 8 percent share of the international market, 10 percent share of the local exchange market and about a 48 percent share of the CMTS market in the Philippines. Thus, it could not have whipsawed AT&T on its own. The Bureau holds that whipsawing “often manifests itself in the form of a foreign carrier ‘picking off’ or isolating a U.S. carrier and placing that carrier under substantial pressure to agree to its unduly favorable demands.”⁴³ Globe has not been “picking off” U.S. carriers. Further, Globe offered all U.S. carriers the same rate, effective on the same date. In fact, Globe actually offered more favorable rates to AT&T and other U.S. carriers than it offered to non-U.S. carriers, even for off-net traffic, because these U.S. carriers control a large volume of Philippine-bound traffic.

IV. THE INTERNATIONAL BUREAU ACTED WITHOUT JURISDICTION AND/OR OUTSIDE THE BOUNDS OF ITS DELEGATED AUTHORITY, AND COMMITTED PREJUDICIAL PROCEDURAL ERROR.

The Commission also should reverse the Order based on numerous procedural errors. The Bureau acted without jurisdiction and/or exceeded the bounds of its delegated authority by considering novel issues not previously considered by the Commission and ignoring existing FCC precedents. Even assuming *arguendo* that the Bureau had authority to rule on AT&T’s Petition, the Bureau committed prejudicial procedural error by acting on a dispute between private parties in the context of a rulemaking. Finally, the Bureau clearly lacked jurisdiction and

⁴² *Order* at n. 81 (holding that “PLDT, *alone as the dominant carrier*, possesses substantial control over both the wireline and wireless markets in the Philippines, regardless of the market share of the other carriers...”) (emphasis added).

⁴³ *Order* at n. 37.

acted contrary to due process in ruling on matters not put before it and granting relief not requested by any party.

A. The Bureau Acted Without Jurisdiction And/Or Exceeded The Bounds Of Its Delegated Authority.

Section 0.261(b) of Commission's rules specifically lists the authority that the FCC has delegated to the International Bureau and the authority that it has retained. The Commission has not delegated authority to the Bureau to act on a petition that "[p]resents new or novel arguments not previously considered by the Commission" or "cannot be resolved under outstanding precedents and guidelines."⁴⁴ As stated above, AT&T's Petition required the Bureau to consider the novel argument that the definition of "whipsawing" should be expanded to encompass the conduct of non-dominant carriers in competitive markets.

Not only did the Bureau overstep the boundaries of its delegated authority by ruling on such new and novel arguments, it even overturned the established presumption that below benchmark rates are just and reasonable. Thus, the Bureau exceeded even the Commission's authority to regulate the rates U.S. carriers pay foreign carriers, as necessary to protect against abuse by foreign monopolists.

The Bureau's decision that below-benchmarks rates are not "necessarily 'fair and reasonable' simply because they are below the applicable benchmark rate"⁴⁵ directly conflicts with the presumption established in the *Benchmarks Order* that rates at or below benchmarks are "just and reasonable."⁴⁶ The Commission instituted benchmark rates in order to "prescribe rates and practices that are just and reasonable" and "to remedy anticompetitive conditions in the

⁴⁴ 47 C.F.R. § 0.261(b) (iii).

⁴⁵ *Order*, ¶ 16.

⁴⁶ *Benchmarks Order*, 12 FCC Rcd at 19941. *See also* 47 U.S.C § 205.

international marketplace.”⁴⁷ The Commission believed that benchmark rates would facilitate more cost-based rates, given the closed telecommunications markets in most foreign countries: “[w]hile acknowledging that “changing market conditions have ... helped to reduce settlement rates...[m]onopoly conditions prevail in most [foreign countries and] benchmark rates are necessary to ensure “reduc[tion] [of] settlement rates on a timely basis to a more cost-based level.”⁴⁸ The Order represents the first action against below-benchmark rates.

Although the Bureau states that it “has not previously approved settlement increases proposed by U.S. carriers on U.S.-international routes,” the only rates that it had previously rejected were rates already above benchmarks.⁴⁹ In this Order, the Bureau in effect disapproved increased rates that were below the benchmark rate for the Philippines and did so without any independent analysis and in disregard of the NTC’s statement that the rates were fair and reasonable. By reverting the route to the ISP, with respect to the carriers found guilty of whipsawing, the Bureau’s decision requires prior authorization of termination rates on the U.S.-Philippine route, regardless of whether they are above or below benchmarks. Moreover, the Bureau’s decision that any rate increase, even those resulting in below-benchmark rates, is unreasonable requires the Commission to interfere with the autonomous findings of foreign regulators on what constitutes just and reasonable rate increases.

⁴⁷ *Benchmarks Order*, 12 FCC Rcd at 19809, 19817. “The FCC has long sought to protect U.S. carriers and U.S. consumers from the monopoly power wielded by foreign telephone companies in the international telecommunications market.” *C&W Order*, 166 F.3d at 1227.

⁴⁸ *Benchmarks Order*, 12 FCC Rcd at 19824-25.

⁴⁹ *Order*, ¶ 15.

To the extent that AT&T asserted that the termination rates proposed by Philippine carriers are not cost-based because domestic interconnection rates are much lower,⁵⁰ AT&T should have brought this criticism to the NTC, which has jurisdiction over these charges, not the FCC, which does not.⁵¹ AT&T ignores the fact that the domestic interconnection charges are in Philippine Pesos while the international termination rates are in U.S. dollars. While under the current exchange rate, the domestic interconnection rate for fixed networks of 2.50 Philippine Pesos converts to approximately \$0.046, under the exchange rates that existed before the Asian financial crisis, the domestic interconnection rate would have converted to an amount closer to \$0.12. Further, although AT&T states that the amount of money it receives from Philippine carriers is less than the amount it pays to the Philippines,⁵² AT&T still enjoys a far greater profit margin on this route than Globe. For example, in 2001, AT&T retained \$186.7 million of the \$239.1 million it billed U.S. consumers for calls to the Philippines.⁵³ In light of the large profit margins AT&T enjoys on this route and the devaluation of the Peso and attendant increase in Philippine carriers' debt service to its equipment manufacturers, the termination rate proposed by Globe is fair and reasonable, reflecting cost trends in the market in which it operates.

⁵⁰ AT&T *Ex Parte*, IB Docket No. 03-38 (dated Mar. 3, 2003).

⁵¹ The Bureau itself noted that oversight over domestic rates in the Philippines "is properly a matter of domestic regulation within the responsibility of the Philippine national regulator." *Order*, ¶ 15.

⁵² *Order*, ¶ 3.

⁵³ See 2001 Annual Section 43.61 International Traffic Data for All U.S. Points, at Table A13: (rel. Jan. 2003). ("2001 Traffic Report"). AT&T also retained \$1.1 million of the \$1.9 million that it collected from Philippines carriers for transit traffic, available at http://www.fcc.gov/Bureaus/Common-Carrier/Reports/FCC-State_Link/Intl/4361-f01.pdf (last visited Apr. 9, 2003). See *id.*

B. The Bureau Erred In Resolving Disputes Between Private Parties In A Rulemaking Proceeding.

The Bureau resolved a dispute between private parties with rulemaking procedures and thus failed to afford the parties the proper protection under the Administrative Procedure Act (“APA”).⁵⁴ In proceeding in this manner, the Bureau ignored the distinction that the APA draws between rulemakings and adjudications. The purpose of a rulemaking is the “[i]mplementation or prescription of law or policy for the future. . . .”⁵⁵ In contrast, the purpose of an adjudication is the “determination of past and present rights and liabilities” and at issue is “a decision as to whether past conduct was unlawful, so that the proceeding is characterized by an accusatory flavor and may result in disciplinary action.”⁵⁶ Further, rulemakings generally involve legislative facts, which “do not usually concern the immediate parties but general facts which help the tribunal decide questions of law and policy discretion,”⁵⁷ unlike adjudications, which are concerned with “facts about the parties and their activities, businesses and properties”.⁵⁸ Most often, these facts are used to decide whether a given rule is applicable.⁵⁹

Given these distinctions, it is clear that the Bureau took adjudicative action. First, the decision had an adjudicatory objective (*i.e.*, it was intended to determine whether Philippine carriers’ whipsawed) and resulted in disciplinary action (*e.g.*, a stop payment order). Second, the

⁵⁴ When the Commission noticed AT&T’s Petition, it allowed interested parties to file comments or oppositions pursuant to Sections 1.415 and 1.1419 of the Commission’s Rules. *Petitions for Protection from Whipsawing on the U.S.-Philippines Route*, Public Notice, IB Docket Nos. 02-324 and 96-261, DA 03-390 (Feb. 10, 2003). These Sections are contained in the rulemaking section of the FCC’s Rules.

⁵⁵ See Attorney General’s Manual on the Administrative Procedures Act (1947) at 14-15.

⁵⁶ See Attorney General’s Manual on the Administrative Procedures Act (1947) at 14-15.

⁵⁷ See 1 Davis, Administrative Law § 7.02 at p. 413 (1958).

⁵⁸ See *id.*

⁵⁹ See 1 Koch, Administrative Law and Practice § 2.11 at pp. 46-47 (1997).

Bureau issued an Order, which documents the outcome of an adjudication, and not a Report and Order, which documents the outcome of a rulemaking. Finally, the Bureau examined adjudicative facts—facts about the specific business actions of these carriers—rather than legislative facts.

The Bureau erred in adjudicating without providing the parties an adequate hearing.⁶⁰ It is well understood that “[w]here adjudicative, rather than legislative facts are involved, the parties must be afforded a hearing to allow them an opportunity to meet and to present evidence.”⁶¹ A hearing is particularly important in a case like this one, which involves substantial and material questions of fact and results in an order against individuals.⁶²

C. The Bureau Failed To Follow The Necessary Procedures For Those Aspects Of The Proceeding Appropriately Addressed In A Rulemaking.

In addition to failing to provide a hearing to address disputed facts, the Bureau erred by failing to seek notice and comment on those aspects of its Order that were appropriately addressed in a rulemaking. The APA recognizes two distinct types of rules: substantive rules and interpretive rules. Substantive rules, which require notice and comment, modify or add to a legal norm and are based on an agency’s own authority.⁶³ Interpretive rules, which are exempt

⁶⁰ While the Bureau did accept an *ex parte* meeting with Globe’s counsel, the fact that its Order does not cite to any substantive *ex parte* presentations made by Globe or other Philippine carriers demonstrates that the Bureau in effect failed to hold a hearing to address disputed facts.

⁶¹ See *Alaska Airlines, Inc. v. Civil Aeronautics Board*, 545 F.2d 194, 200 (D.C. Cir. 1976) (“*Alaska Airlines*”).

⁶² See, e.g., *Alaska Airlines*, 545 F.2d at 201; *SBC Comm. Inc. v. FCC*, 56 F.3d 1484, 1496 (D.C. Cir. 1995).

⁶³ See *Syncor Int’l Corp. v. Shalala*, 127 F.3d 90, 95 (D.C. Cir. 1997) (“*Syncor*”).

from the notice and comment requirement, typically reflect an agency's construction of a statute that it has been entrusted to administer.⁶⁴

In determining whether an agency's exercise of regulatory authority is substantive, courts will consider whether the authorizing statute is very general, indicating Congressional intent to delegate legislative tasks to the agency.⁶⁵ Section 201 of the Communications Act is a very general statutory provision, requiring simply that carrier charges be "just and reasonable."⁶⁶ Further, Congress has provided little guidance on what constitutes a just and reasonable rate, expressing only a preference for rates determined by competition not regulatory dictate.⁶⁷ Thus, the Bureau engaged in substantive rulemaking here.⁶⁸ It expanded the definition of whipsawing, enforced against a below-benchmark rate established in a competitive market, and removed ISR-approval from the U.S.-Philippines route. Before making these substantive departures from policies and standards of conduct originally established by rulemaking, the Bureau should have provided notice of these proposed changes to allow all interested parties to comment.

Moreover, AT&T's concerns regarding termination rates that, while below benchmarks, are allegedly not cost-based are better addressed in the FCC's pending rulemaking proceeding

⁶⁴ See *Syncor*, 127 F.3d at 94.

⁶⁵ See *Syncor*, 127 F.3d at 94 n.6 (citing *Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F.3d 579, 588 (D.C. Cir. 1997)).

⁶⁶ See 47 U.S.C. § 201(b).

⁶⁷ See 47 U.S.C. § 160.

⁶⁸ See *Nat'l Family Planning & Reproductive Health Ass'n v. Sullivan*, 979 F.2d 227, 235 (D.C. Cir. 1992) (holding that "[i]f a second rule repudiates or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative.") (quoting Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 Duke L.J. 381, 386 (Apr. 1985)).

regarding “possible reform of our International Settlements Policy (ISP) and International Simple Resale and benchmarks policies.”⁶⁹ In fact, the FCC extended the time for filing of comments in that rulemaking to permit interested parties to comment on “recent actions taken by several foreign administrations to impose rate floors on international termination rates. . . .”⁷⁰ In the Order, the Bureau cites to the ISP rulemaking on whether the Commission “should re-examine and revise its accounting rate policies.”⁷¹ AT&T itself implicitly recognized that the rulemaking is an appropriate forum when it submitted comments on the Philippine proposal in the rulemaking that raised the same issues set forth in its petition.⁷²

D. The Bureau Lacked Jurisdiction And Acted Contrary To Due Process In Ruling On Matters Not At Issue And Granting Relief Not Prayed For In The AT&T Petition.

The Bureau’s Order addressed issues not disputed by any party and ordered a remedy that no party had requested or even raised in their pleadings. The Bureau erred in suspending all payments to Globe until full restoration of AT&T’s circuits.⁷³ First, the Bureau’s decision, in effect requiring Philippine carriers to open their circuits if they are to be paid by U.S. carriers, is beyond the jurisdiction of FCC. The NTC, which has sole jurisdiction over Philippine carriers, cannot even compel Philippine carriers to open their circuits. Second, directing U.S. carriers to

⁶⁹ *ISP Reform NPRM*, 17 FCC Rcd at 19955.

⁷⁰ The FCC noted “actions of this nature raise concerns insofar as they have the potential to cause increases in consumer calling rates by raising commercially-negotiated termination rates between U.S. and foreign carriers.” *Commission Extends Pleading Cycle in Rulemaking Proceeding On Possible Reform of the Commission’s International Settlement Policy in View of Recent International Developments*, Public Notice, IB Docket Nos. 02-324, 96-261 (rel. Dec. 2, 2002) (Public Notice).

⁷¹ *Order* at n. 57.

⁷² AT&T Comments at 19, IB Docket Nos. 02-324 and 96-261 (filed Jan. 14, 2003) (raising its concerns on the actions of PLDT and other Philippine carriers).

⁷³ *Order*, ¶ 27. AT&T owes Globe over \$9 million for traffic settled at the previous, undisputed rate of \$0.08 for fixed line terminations and \$0.12 for CMTS terminations.

suspend payments for all traffic, including payments owed under the previous undisputed expired settlement agreements, has an impermissible retroactive effect. AT&T does not dispute the rates under its expired rate agreements with Philippine carriers or the \$9 million it owes Globe. Therefore the Bureau should not have stopped payment of amounts due under these agreements.

In addition, the Bureau erred in removing the U.S.-Philippines route from the list of ISR-approved routes, a remedy no party requested or even raised in its pleadings. U.S. and Philippine carriers providing service on this route were not afforded an opportunity to comment on or object to this action, rendering them totally defenseless in this regard and depriving them of due process. As the Commission is aware, the removal of ISR-approval necessarily means reimposition of the regulatory requirements of the ISP, an outcome that neither U.S. nor Philippine carriers could be expected to welcome.

E. The Bureau Failed To Engage In Reasoned Decisionmaking.

Under the APA, a reviewing court must “‘determine ‘whether the agency’s decisionmaking was ‘reasoned,’”... *i.e.*, whether it considered the relevant factors and explained the facts and policy concerns on which it relied, and whether those facts have some basis in the record.”⁷⁴ The Bureau’s Order ignored exculpatory evidence submitted by the Philippine carriers and relied solely on AT&T’s characterization of events. For example, the Bureau stated that Globe has a U.S. affiliate and a Section 214 authorization, which it does not.⁷⁵ The Bureau also dismissed evidence showing that Globe acted in good faith and did not retaliate against AT&T, continuing to accept AT&T’s on-net traffic even after it requested AT&T to stop sending

⁷⁴ See *Nat’l Treasury Employees Union v. Horner*, 854 F.2d 490, 498 (D.C. Cir. 1988) (quoting *American Horse Protection Ass’n v. Lyng*, 812 F.2d 1, 5 (D.C. Cir. 1987)).

⁷⁵ *Order* at n. 93.

traffic because no agreed upon rate was in place.⁷⁶ In addition, the Bureau, without explanation, cited PLDT submissions as evidence of Globe's *mens rea*.⁷⁷ Clearly, the Bureau abdicated its duty to consider all the evidence.⁷⁸ Indeed, the Bureau appears not to have read the numerous *ex parte* presentations of the Philippine carriers in the Order, citing only *ex partes* filed by AT&T and WorldCom. The Bureau's findings amounted to unreasoned acceptance of AT&T's and WorldCom's versions of events and failed to demonstrate a rational connection between the evidence and its conclusions.⁷⁹

The Bureau also failed to explain its policy shifts or reversals (*i.e.*, its expansion of the definition of whipsawing, enforcement against a competitive, below-benchmark rate, and reversion to the ISP). The Bureau should have "provide[d] reasoned analysis indicating that prior policies and standards are being changed and not casually ignored"⁸⁰ and explained the reason for its departure from prior precedent.⁸¹ Instead, the Bureau stated no basis for its conclusion that whipsawing can occur in competitive markets with below-benchmark rates, where alternative termination services are available to U.S. carriers. The Bureau simply

⁷⁶ Order, ¶ 5.

⁷⁷ Order, ¶ 17. For a complete listing of the aspects of the Order, which reflect unreasoned decisionmaking, please see Appendix 1 attached hereto.

⁷⁸ See *e.g.*, *Lorion v. United States NRC*, 785 F.2d 1038, 1042 (D.C. Cir. 1986); *Poulin v. Bowen*, 817 F.2d 865, 876 (D.C. Cir. 1987).

⁷⁹ See *Money Station Inc v. Board of Governors of the Federal Reserve System*, 81 F.3d 1128, 1135 (D.C. Cir. 1996), *appeal dismissed per stipulation*, 1997 U.S. App. LEXIS 3121 (D.C. Cir. 1997).

⁸⁰ See *WLOS TV, Inc. v. FCC*, 932 F.2d 993, 995 (D.C. Cir. 1991) (quoting *Greater Boston Television Corp v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971)).

⁸¹ See *Williston Basin Interstate Pipeline Co. v. FERC*, 165 F.3d 54, 65 (D.C. Cir. 1998) (citing *Gilbert v. NLRB*, 56 F.3d 1438, 1445 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996)).

ignored precedent that only a monopolist could whipsaw and finding that below-benchmark rates are presumptively just and reasonable.

V. THE INTERNATIONAL BUREAU ACTED CONTRARY TO THE PUBLIC INTEREST.

In addition to being procedurally and substantively defective, the Order does not promote the public interest. First, the Bureau cannot establish a general principle that all rate increases are unjust and unreasonable, thereby unhooking the FCC's anti-whipsawing policy from its policy moorings of protecting consumers from non-competitive rates. Second, the Bureau's decision allows AT&T to reverse whipsaw Philippine carriers. For example, AT&T continued to send Globe traffic when Globe requested it not do so.⁸² Digitel and BayanTel reported that AT&T halted or significantly reduced traffic to force them to accede to lower termination rates.⁸³ Presumably attempting to pit Philippine carriers against each other, AT&T filed its March 25, 2003 report claiming that BayanTel and Digitel alone appeared to have ceased blocking AT&T's traffic.⁸⁴

Third, the Order undermines developing countries' interest in liberalizing. The Order is premised on the faulty premise that competitive markets must always have constantly reducing prices. The decision therefore is redolent of a "command and control" economy, in which prices are established by government fiat not competition.⁸⁵ In a private, truly competitive market, costs, and prices, may rise. Instead of taking action which alienates countries like the

⁸² Globe Opposition at 6-7.

⁸³ Digitel Comments at 2-3; BayanTel Position Paper at 2.

⁸⁴ *AT&T Report on the Status of its Efforts to Have its Circuits Fully Restored on the U.S.-Philippines Routes*, Public Notice, IB Docket No. 03-38 (filed Mar. 25, 2003).

⁸⁵ The Bureau's intervention here also is contrary to the spirit of the Telecommunications Act of 1996, which sought to have the FCC rely on competition to regulate rates, and to itself regulate prices only where a lack of competition resulted in unreasonable rates. 47 U.S.C. § 160.

Philippines, which are moving towards more cost-based rates, the FCC should encourage such development by recognizing the findings of these foreign regulatory bodies that have the same policy objectives of the FCC.

Fourth, the retroactive application of the Bureau's Order also has created serious accounts receivables concerns, which in turn create unnecessary tensions between U.S. and foreign carriers. Thus, contrary to the intent of the Bureau, the retroactive stop payment order creates a disincentive for the Philippine carriers to open direct circuits with U.S. carriers. Moreover, to the extent that the Bureau's Order undermines foreign carrier interest in doing business with U.S. international carriers, the Order also contravenes the fundamental purpose of the Commission to make available "to all the people of the United States . . . and world-wide wire and radio communication" services.⁸⁶

Finally, the decision creates an impossible situation for Philippine carriers. The Bureau ordered all U.S. facilities-based carriers with correspondent agreements with the accused Philippine carriers for direct termination of U.S. traffic on the U.S.-Philippines route to suspend all payments to these carriers for switched voice service effective March 10, 2003, until such time as the Bureau finds that AT&T's circuits on the U.S.-Philippines route are fully restored. In response, the NTC directed all Philippine carriers not to accept terminating traffic via direct circuits from U.S. facilities-based carriers who do not pay them for services rendered. The Bureau's Order thus paralyzes Philippine carriers. U.S. carriers, including AT&T, cannot pay them until AT&T's circuits are declared fully restored by the FCC but Philippine carriers cannot restore AT&T's circuits until AT&T pays them for services rendered. Complying with both the FCC and NTC mandates is impossible. Globe and the other affected Philippine carriers will not

⁸⁶ See 47 U.S.C. § 151.

disobey the directive of their regulator. In cases such as this, where compliance with the mandates of two jurisdictions is impossible, the FCC, as the foreign regulator *vis-à-vis* the Philippine carriers, should defer to the NTC under the principles of international comity.

VI. REQUEST FOR RELIEF

For the reasons set forth above, Globe respectfully requests that the Commission overturn the Bureau Order.

Respectfully submitted,

GLOBE TELECOM, INC.

By: /s/ Patricia J. Paoletta
Lawrence W. Secrest, III
Patricia J. Paoletta
Suzanne Yelen
Heather O. Dixon
Kyong H. Wang
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000

April 9, 2003

Counsel for Globe Telecom, Inc.

APPENDIX 1

In issuing the Order, the International Bureau (“Bureau”) violated its duty of reasoned decision making¹ and rendered an arbitrary and capricious decision. The Order’s defects are summarized below.

- The Bureau noted, inaccurately, that Globe Telecom Inc. (“Globe”) has a U.S. affiliate and or Section 214 authorization, which it does not.²
- The Bureau accepted AT&T Corp.’s (“AT&T”) argument that rates to high teledensity, middle and high income countries in Asia are appropriate comparables to the Philippines, which is a lower middle income, low teledensity country.³
- The Bureau found that “Globe began blocking [its] circuits with AT&T” on February 1, 2003.⁴ In so doing, the Bureau disregarded Globe’s statements that it did not block any circuits with AT&T, rather it simply ceased terminating off-net traffic in order to avoid financial losses of \$0.04 per call.⁵
- The Bureau found that Globe and other Philippine carriers “have chosen to disrupt services rather than to continue negotiations with AT&T,”⁶ despite evidence in the record that AT&T did not in fact attempt negotiations.⁷

¹ See *Nat’l Treasury Employees Union v. Horner*, 854 F.2d 490, 498 (D.C. Cir. 1988).

² *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief*, Order, IB Docket No. 03-38, DA 03-581, at n. 93 (rel. Mar. 10, 2003) (“Order”).

³ *Order* at n. 44 (citing to the AT&T Petition which notes that the \$0.08 termination rate to the Philippines is higher than the termination rates to Australia, Malaysia, New Zealand, Singapore, Hong Kong, Japan, South Korea, and Taiwan). See also *International Settlement Rates*, 12 FCC Rcd 19806, 19965, Appendix C (1997) (Report and Order) (“*Benchmarks Order*”) (classifying these countries as upper middle or high income countries and classifying the Philippines as a lower middle income country).

⁴ *Order*, ¶ 5.

⁵ See *Globe Opposition*, IB Docket No. 03-38, at 3 (filed Feb. 21, 2003). See also *Order*, ¶ 12 (finding that Globe only blocked AT&T’s off-net traffic); *Globe Application for Review*, IB Docket No. 03-38, at 12 (April 9, 2003).

⁶ See *Order*, ¶ 18.

⁷ *Globe Opposition* at Exh. 3; *Digital Telecommunications Philippines, Inc. Comment*, IB Docket No. 03-38, at 4-5 (Feb. 21, 2003) (“*Digital Comments*”); *BayanTel Position Paper*, IB Docket No. 03-38, at 1 (Feb. 28, 2003); *PLDT Opposition*, IB Docket No. 03-38, at 7-8 (Feb. 21, 2003). See also *Globe Application for Review* at 4.

- The Bureau resolved undisputed facts against Globe. For example, Globe stated that it tried to negotiate with AT&T and AT&T did not rebut this statement.⁸ Nonetheless, the Bureau found that Globe chose to “disrupt services rather than to continue negotiations with AT&T.”⁹
- The Bureau ignored evidence that AT&T had breached its switched voice agreement with Globe because of non-payment for services already rendered.¹⁰
- The Bureau also mischaracterized Globe’s arguments. For example, the Bureau characterized Globe’s arguments re international comity as “the argument made that international comity compels us to permit ‘whipsawing’ of U.S.-international carriers is unfounded.”¹¹ Globe did not make such an argument. Rather, Globe pointed out that the Philippine regulator, the National Telecommunications Commission (“NTC”), was encouraging negotiations between the parties and had directed Philippine carriers to honor their existing agreements with U.S. carriers.¹²
- The Bureau found evidence of necessary “*mens rea*” for anticompetitive behavior by Globe in the Philippine Long Distance Telephone Company’s pleadings.¹³ Further, the Bureau ignored evidence that Globe continued terminating AT&T’s on-net traffic, which undermined AT&T’s claims and the Bureau’s findings regarding Globe’s nefarious intent.¹⁴
- The Bureau implied that the proposed rate increases are “unnecessarily high payments” in contravention of the presumption of reasonableness for below-benchmark rates.¹⁵ Although the Bureau admitted that it is not well suited to perform any analysis regarding the cost-justifications for the proposed rate increases and

⁸ Globe Reply Comments, IB Docket No. 03-38, at 3 (Feb. 27, 2003). *See also* Globe Application for Review at 4.

⁹ *Order*, ¶ 18.

¹⁰ Globe Opposition at 7-8. Globe has recently received some of the back payments due from AT&T.

¹¹ *Order*, ¶ 15.

¹² Globe Reply Comments at 8-10.

¹³ *Order*, ¶ 17 (citing to PLDT Opposition for the proposition that “PLDT and the other Philippine carriers have used their control over terminating traffic in the Philippine market to attempt to extract financial concessions from AT&T and WorldCom”). *See also Order*, ¶ 5 (“PLDT began blocking ... *in retaliation* for WorldCom’s refusal to agree to the demanded rate increase”) (emphasis added) and ¶ 11 (“PLDT’s actions are designed to force the rate increase on U.S. carriers.”).

¹⁴ *See supra* note 6.

¹⁵ *Order*, ¶ 10.

stated that it would defer to the NTC on that issue, the Order does not reflect such deference to the expertise of the Philippine regulator.¹⁶

- The Bureau implied that termination rates must be equal to the costs of termination, not the costs of operation, which would be affected by currency devaluation and debt service obligations.¹⁷ However, no international standard that the Republic of the Philippines has agreed to requires rate increases to reflect only the actual costs of termination and forbids rate increases that are oriented towards the costs of operation.
- The Bureau mischaracterized the International Telecommunication Union (“ITU”) position on accounting rates, calling the ITU a forum that is promoting “*cost-based*” rates.¹⁸ ITU Recommendation D. 140 actually recommends “*cost-oriented*” rates.¹⁹ Further, as the NTC and Globe, among others, pointed out to the Commission, Annex E to ITU Recommendation D. 140 recommends a settlement rate of \$0.24, a rate much higher than the rates proposed by the Philippine carriers found guilty of whipsawing.²⁰
- The Bureau noted that AT&T and WorldCom cannot have market power and based this finding on “the number of U.S. carriers that compete in providing service on the U.S.-Philippines route and their respective shares of U.S. billed traffic.”²¹ However, the Bureau found that the Philippine carriers, operating in a market where nine companies compete to provide international termination services, could exercise market power and did so without any reasoned analysis.²²
- The Bureau demonstrated its appreciation for the situation of U.S. carriers, which are allegedly the victims of a “price squeeze” when they compete with foreign affiliates operating in the U.S.²³ However, the Bureau did not exhibit the same appreciation for

¹⁶ Order, ¶ 15. See also Globe Application for Review at 14-16.

¹⁷ Order, ¶ 11.

¹⁸ Order, ¶ 13 (emphasis added).

¹⁹ ITU-T Recommendation D.140 (emphasis added). See also *Benchmarks Order*, 12 FCC Rcd at 19814 (accurately characterizing ITU Recommendation D.140 as calling for carriers to adopt “nondiscriminatory, cost-oriented, and transparent accounting rates”).

²⁰ Globe Opposition at 14; NTC Memorandum Order at 2 (March 12, 2003), attached as Exh. 9 to Globe Application for Review.

²¹ Order at n. 47.

²² See *Digital Comments*, IB Docket No. 03-38, at 9 (Feb. 21, 2003). See also Globe Application for Review at 10-12.

²³ Order at n. 93 (describing foreign affiliated U.S. carriers that can underprice non-foreign affiliated U.S. competitors on the same route because “the payment for termination services represents an internal corporate transfer for the affiliate, but represents a real cost to unaffiliated U.S. competitors”).

the situation of the Philippine carriers. In fact, the Bureau ignored Globe's repeated explanation that the same economic phenomenon exists when Globe is faced with the prospect of terminating AT&T's off-net traffic at a loss.²⁴

- Further, the Bureau reasoned that, to the extent that the actions of the U.S. carriers drove down settlement rates, this reflected nothing more than market forces at work.²⁵ It refused, however, to acknowledge the possibility that the rate increases proposed by the Philippine carriers could be the result of the same market forces.
- The Bureau ignored the Philippine carriers' arguments that AT&T had whipsawed them in the past.²⁶
- The Bureau selectively quoted from and mischaracterized the NTC orders.²⁷ The Bureau wrongly interpreted the NTC order, which actually mandated the continued termination of traffic only where existing contracts are in place,²⁸ as requiring open circuits during negotiations.²⁹
- The Bureau stated "it appears that there are legal contracts requiring continued provision of service pending negotiation of new rate annexes."³⁰ In reaching this conclusion, the Bureau did not perform an independent review of the contracts but instead relied solely on AT&T's interpretation of the contract terms.³¹
- The Bureau cited misleading statistics regarding AT&T answer seizure ratios ("ASRs").³² AT&T has ASRs in the 30s for on-net traffic sent to Globe. Further, the low ASRs cited by the Bureau and AT&T are attributable to AT&T's sending more off-net traffic than normal to Globe, with full knowledge that Globe will not terminate that traffic.

²⁴ See Globe Application for Review at 4, 12.

²⁵ Order at n. 47.

²⁶ See Globe Opposition at 6-7; Digitel Comments at 2-3; BayanTel Position Paper at 2. See also Globe Application for Review at 23.

²⁷ Order, ¶ 4.

²⁸ Letter from A. Borje and K. Heceta, National Telecommunications Commission to Commissioners, FCC (Feb. 26, 2003), attached as Exh. 8 to Globe Application for Review.

²⁹ See Order at n. 68.

³⁰ Order, ¶ 15.

³¹ See Globe Application for Review at 10.

³² Order at n.25 (stating that AT&T's ASR has dropped to under 5 percent since early February 2003).

- The Bureau incorrectly cited to Globe’s Philippine SEC filing, as evidence of collusion.³³ The Bureau never addressed Globe’s description of the domestic interconnection agreements and of Filipino law requiring non-discriminatory prices between carriers.³⁴
- The Bureau also ignored facts³⁵ on the record demonstrating variations among the rates proposed to U.S. carriers by different Philippine carriers.³⁶
- The Bureau noted that “whipsawing” tends to exist during the negotiation stages prior to the filing of service agreements or rate modifications with the Commission.³⁷ Yet, it ignored evidence that Globe only began declining off-net traffic after AT&T refused to negotiate and its agreement with AT&T regarding switched voice traffic lapsed.³⁸
- Following AT&T’s lead, the Bureau cited that the termination rate for domestic calls to wireline networks set forth in Globe’s domestic interconnection agreements with other Philippine carriers is \$0.046.³⁹ In fact, the rate set forth in the agreement is 2.50 Philippine Pesos. Under the current exchange rate, this is equivalent to approximately \$0.046. However, under the exchange rates existing before the Asian financial crisis, this rate would have converted to about \$0.12.⁴⁰
- The Bureau failed to differentiate between its Order, which effectively found the proposed international termination rate increases to be impermissible, and its decision to allow U.S. carriers to increase the rates that consumers pay.

³³ *Order* at n. 50.

³⁴ *See* Globe Opposition at 5-7. *See also* Globe Application for Review at 2-3.

³⁵ *Order*, ¶ 12 (stating that “[e]ach of these carriers demanded identical increased rate for terminating international calls...”).

³⁶ *See* PLDT Opposition at Exh. 9; Globe *Ex Parte*, IB Docket No. 03-38, at 2 (Mar. 6, 2003); ABS-CBN TeleCom North America, Inc. Reply Comments, IB Docket No. 03-38, at 2 (Feb. 27, 2003). *See also* Globe Application for Review at 12.

³⁷ *Order*, ¶ 11.

³⁸ *See* Globe Opposition at 3. *See also* Globe Application for Review at 5.

³⁹ *Order* at n.52.

⁴⁰ *See* Globe Application for Review at 16.

EXHIBIT 1

EXECUTIVE ORDER NO. 109**POLICY TO IMPROVE THE PROVISION OF LOCAL EXCHANGE CARRIER SERVICE**

WHEREAS, local exchange service is fundamental to the goal of providing universal access to basic and other telecommunications services;

WHEREAS, during the development phase, cost-based pricing of services such as national and international long distance and other telecommunications services may be employed to generate funds which may then be used to subsidize the local exchange service;

WHEREAS, while the telecommunications sector as a whole is profitable, the profits mainly come from the toll services particularly from the international long distance service; and

WHEREAS, there is a need to promulgate new policy directives to meet the targets of Government through the National Telecommunications Development Plan (NTDP) of the Department of Transportation and Communications (DOTC), specifically:
(1) to ensure the orderly development of the telecommunications sector through the provision of service to all areas of the country,
(2) to satisfy the unserved demand for telephones and (3) to provide healthy competition among authorized service providers.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law do hereby order:

Section 1. Definition of Terms. The following definitions shall apply within the context of this policy:

- (a) Basic Telecommunications Service - refers to local exchange residence and business telephone service and telegraph service without additional features;
- (b) Cost-based pricing - refers to a system of pricing in which the actual cost of providing service establishes the basic charge to which a fixed mark-up is added to collect a standard charge to all users without discrimination;
- (c) Local Exchange Carrier Service - refers to a telecommunications service, primarily but not limited to voice-to-voice service, within a contiguous geographic area furnished to individual

Subscribers under a common local exchange rate schedule;

- (d) Value-based pricing - also known as value of service pricing refers to a system of pricing where cost of service establishes the minimum charge and a variable mark-up is added to collect revenue from those who value the service more highly; and
- (e) Universal Access - refers to the availability of reliable and affordable telecommunications service in both urban and rural areas of the country.

Section 2 Objective. The objective of this policy is to improve the provision of local exchange service in unserved and underserved areas as defined by the National Telecommunications Commission (NTC), thus promoting universal access to basic telecommunications service.

Section 3. General Policy. The Government shall pursue the policy of democratization in the ownership and operation of telecommunication facilities and services.

Section 4. Cross-Subsidy. Until universal access to basic telecommunications service is achieved, and such service is priced to reflect actual costs, local exchange service- shall continue to be cross-subsidized by other telecommunications services within the same company.

Section 5. Service- Packaging. Authorized international gateway operators shall be required to provide local exchange service in unserved and underserved areas, including Metro Manila, within three (3) years from the grant of an authority from the NTC, under the following guidelines:

- (a) Authorized gateway operators shall provide a minimum of three hundred (300) local exchange lines per international switch termination;
- (b) At least one (1) rural exchange line shall be provided for every ten (10) urban local exchange lines installed;
- (c) The establishment of Public Calling Offices at the rural barangay level shall be given an appropriate credit by the NTC towards

the obligation to provide local exchange service.

The above figures are derived from the following factors: number of exchange lines, number of international switch-terminations, traffic, grade of service and demand;

(d) No permit for an international gateway facility shall be granted an applicant unless there is a clear showing that it can establish the necessary foreign correspondenceships; and

(e) Carriers already providing local exchange service in accordance with Section (a) , (b) and (c) shall be authorized to operate an international gateway subject to applicable laws.

Section 6. Subsidiary. The subsidiaries of a public telecommunication carrier operating an authorized international gateway shall not be allowed to operate another gateway in accordance with Executive Order No. 59 (1993).

For this purpose, a telecommunications company shall be considered as a subsidiary if any or all of the following conditions exists:

(a) The two companies share the services of key operating and management personnel;

(b) The shareholdings of one company, together with the shareholdings of its stockholders, in the other company aggregate more than fifty percent (50%) of the outstanding capital stock of the latter company; or

(c) One company and its stockholders have a combined exposure in the other company in the form of loans, advances, or asset-lease equivalent to more than fifty percent (50%) of the capital accounts of the other company.

Section 7. Cellular Mobile Telephone System. Authorized international gateway operator may also be authorized to provide Cellular Mobile Telephone System (CMTS) service and other non-basic telecommunications service which are possible source of subsidy for local exchange carrier service.

Section 8. Non-Basic Services. Authorized providers of other non-basic telecommunications service which are possible sources of subsidy shall be required to provide local exchange carrier service in accordance with guidelines, rules and regulations prescribed by the NTC.

Section 9. Duration of Services. The obligation to provide local exchange carrier service shall remain in force for as long as the service providers described in Sections 5, 7 and 8 hold their authorizations to provide their respective non-basic services.

Section 10. Other Requirements. The foregoing provisions shall be without prejudice to the other requirements for the grant of franchises and Certificates of Public Convenience and Necessity.

Section 11. Interconnection Requirement. All telecommunications service networks shall be interconnected in a non-discriminatory manner in accordance with Executive order No. 59 (1993) and its implementing guidelines.

Section 12. Financial Reporting Requirements. The internal subsidy flows shall be made explicit in the financial reporting system of the telecommunications service providers.

Section 13. Policy Implementation. The NTC is hereby directed to promulgate the guidelines, rules and regulations to implement this Executive Order within (30) thirty days from the effective date of this Executive Order.

Section 14. Violations. Any violation of the Executive Order shall be subject to the same penalties provided for in Section 13 of Executive Order No. 59 (1993).

Section 15. Transitory Provisions. Existing telecommunications service providers described in Section 5, 7 and 8 shall have a period of five (5) years to comply with the above requirements to provide local exchange service.

Section 16. Pending Applications. Telecommunications service providers with existing and pending applications for International Gateway Facility, Cellular Mobile System (CMTS) and other Value Added Services (VAS) providers need not revise their applications with the NTC. However, upon issuance of the Provisional Authority of CPCN, as the case may be, they shall be given a period of three (3) months within which to submit and file the necessary applications for local exchange service in accordance with the provisions hereof.

Section 17. Repealing Clause. All executive orders, administrative orders and other Executive issuance inconsistent herewith are hereby repealed, modified or amended accord.

Section 18. Effectivity. This Executive Order shall take effect immediately.

DONE in the City of Manila, this 12th day of July in the year of the Lord, Nineteen Hundred and Ninety-Three.

(sgd) FIDEL V. RAMOS

By the President:

TEOFISTO T. GUINGONA, JR.
Executive Secretary

EXHIBIT 2

**MEMORANDUM CIRCULAR
NO. 9-7-93**

SUBJECT : IMPLEMENTING GUIDELINES ON THE PROVISIONS OF E. O. 109

Pursuant to Executive Order No. 109 and the powers vested upon the National Telecommunications Commission under Act No. 3846, as amended (Radio Control Law), Act No. 146, as amended (Public Service Act) and Executive Order No. 546 Series of 1979, the following guidelines on the provisioning of local exchange carrier services is hereby promulgated:

Article I
SCOPE AND DEFINITION

Section 1. This circular shall set the guidelines for the obligatory provisioning of local exchange carrier (LEC) services by the operators of international gateway facilities (IGF), the cellular mobile telephone service (CMTS) and other non-basic telecommunications services which are considered source of subsidy.

Section 2. As used in this circular, the following definitions shall apply:

LOCAL EXCHANGE SERVICE AREA - shall refer to a defined area as determined by the Commission within a municipality or city or combinations of two or more cities and/or municipalities under a common local exchange rate schedule.

URBAN - shall refer to the local exchange service areas where the telephone density is more than 1 per 100 inhabitants and shall be based on the telephone density targets from the approved National Telephone Development Plan (NTDP), expressed as main station per 100 persons.

RURAL - shall refer to local exchange service areas where the telephone density as mentioned above is 1 per 100 inhabitants or less

UNSERVED AREAS - shall refer to the local exchange service areas within the Philippines where there is no existing local telephone exchange service.

UNDERSERVED AREAS - shall refer to the local exchange telephone service areas within the Philippines where local exchange service is available but the number of existing telephone connections and available lines are less than the established telephone density as mentioned in the definition of URBAN or when the LEC cannot provide the service to 90% of the applicants within ten (10) working days from date of application.

PUBLIC TELECOMMUNICATIONS CARRIER (PTC) - shall refer to duly enfranchised and NTC certificated telecommunications carrier and/or any entity duly authorized by law, including the government, to provide public telecommunications services.

BASIC TELECOMMUNICATIONS SERVICE - shall refer to local exchange residence and business telephone service and telegraph service without additional features.

ADDITIONAL FEATURES - shall refer to the enhancements made over the plain telephone/telegraph service for which the subscriber are made to pay additional charges.

NON-BASIC TELECOMMUNICATIONS SERVICE - shall refer to all types of telecommunications services not classified under basic telecommunications service.

INTERNATIONAL SWITCH TERMINATION -shall refer to a port in the switching international gateway system equivalent to 4KHz or 64 kbps (analog or digital) where international circuit terminates,

COMMISSION - shall refer to the National Telecommunications Commission.

Article II
SERVICE PACKAGING

Section 3. All existing authorized international gateway facilities (IGF) operators

shall file petition for issuance of Certificate of Public Convenience and Necessity (CPCN) to install, operate and maintain local exchange carrier services in unserved and underserved areas, including Metro Manila within two (2) years from the effectivity of this Circular. The petition shall include among others, documents showing:

3.1 The list of proposed service areas after consultation with the Commission. The consultation is necessary to rationalize the provision of LEC services in the country.

3.2 The legal, financial and technical capabilities to undertake the proposed project/program;

3.3 The implementation time frame not to exceed three (3) years from the grant of the authority to install, operate and maintain LEC service; and

Section 4. All existing authorized IGF operators shall provide a minimum of three hundred (300) local exchange lines per one international switch termination. All authorized IGF operators shall be required to provide a minimum of three hundred thousand (300,000) local exchange lines within a period of three (3) years from the date of authority to install, operate and maintain LEC service.

Section 5. An authorized IGF operator shall be considered to have complied with the provisions of Article 11, Section 4 hereof if any of the following conditions is satisfied:

5.1 The IGF operator on its own shall have provided LEC service and/or Public Calling Offices (PCOS) pursuant to Article 11 Section 4.

5.2 The IGF operator shall have provided LEC service and/or PCOs as part-owner of the LEC and/or PCO operators provided that the compliance shall be based on the extent of international gateway facilities operator's equity exposure in the LEC and/or PCO. This provision shall not apply if the LEC from which the IGF operator acquires equity is also an authorized operator of IGF.

5.3 A PTC affiliated to an existing authorized IGF operator shall have been authorized to assume the obligation to provide the local exchange lines and/or PCOs as required Article 11, Section 4 hereof. An affiliated PTC is herein defined as an entity that directly or indirectly controls, or is controlled by or is under common control together with another entity through the possession of the power to direct or cause the direction of the and policies of the entity or enterprise whether through the ownership of equity, interlocking directorate or common management, by contract or otherwise.

Section 6. As the IGF operator increases its international switch terminations in excess of 1,000 there shall be a corresponding increase in the local exchange lines pursuant to Section 4 hereof.

Section 7. All IGF operator shall provide at least one (1) rural local exchange line for every ten (10) urban local exchange lines installed.

Section 8. An IGF which provides PCOs in an unserved rural barangay shall be deemed to have installed local telephone subscriber lines equal to the number of households in that particular barangay divided by 10.

Section 9. Public telecommunications carriers that have complied with the provisions of Sections 4 and 7, may be authorized upon application and after due notice and hearing to install, operate and maintain international gateways and/or CMTS subject to legal, financial and technical capabilities of the PTCS.

Section 10. Applicant for new IGF operation shall not be granted authority unless it can show by substantial and convincing evidence that it can establish the necessary foreign correspondentship and that it can provide local exchange service pursuant to Article 11, Section 4, and 7 within five (5) years from grant of authority. The grant of authority shall consider the viability of the IGF service and its being able to provide a source of subsidy for LEC service until the said service shall have been priced reflecting cost.

Section 11. The subsidiaries of public telecommunications carriers operating an authorized international gateway as defined in E.O. 109 shall not be allowed to operate other international gateway pursuant to Executive Order No. 59.

Article III

CELLULAR MOBILE TELEPHONE SYSTEMS (CMTS) AND OTHER NON-BASIC TELECOMMUNICATIONS SERVICES

Section 12. Authorized IGF, upon application and after due notice and hearing may be authorized to provide CMTS and other basic telecommunications services which are possible sources of subsidy.

Section 13. The grant of authority to applicants for CMTS shall consider the viability of the CMTS service and its ability to provide a source of subsidy for LEC service, until the LEC service shall have been priced reflecting cost. Authorized CMTS providers shall be required to provide four (4) local exchange lines per one (1) CMTS subscriber line.

Section 14. Authorized nationwide CMTS operators shall be required to provide a minimum of 400,000 local exchange lines within a period of five (5) years from the effectivity of this Circular. Authorized regional CMTS operators shall be required to provide a minimum of 40,000 local exchange lines within a period of five (5) years. The provision of local exchange service shall comply with the provisions of Article 11 Sections 7 and 8.

Section 15. Authorized CMTS operator shall be required to file a separate petition for authority to provide local exchange service in accordance with the preceeding paragraphs. The petition shall, include among others, documents showing:

1 5.1. The list of service areas upon consultation with the Commission.

1 5.2. The timetable of project implementation not to exceed five (5) years from the grant of authority; and

1 5.3. The legal, financial and technical capability of the applicant

Section 16. Authorized operators of non-basic telecommunications services shall plow back their profit in excess of the total company's 12% ROI taking into consideration the historical value (acquisition cost) of its plant in service into the local exchange service by investing in the local exchange service, by establishing their own local exchange network or by acquiring equity from existing local exchange carriers.

Article IV

BILLING AND COLLECTION

Section 17. Each LEC and CMTS services provider shall perform billing and collection services on behalf of the providers of domestic toll service and/or IGF operators that have customers in the local carrier's service territory. The billing and collection services shall be furnished under contracts negotiated between the local carrier and each toll carrier.

Section 18. In the event that a toll carrier and LEC or CMTS services provider are unable to arrive at an agreement, the Commission shall impose a settlement after due, notice and hearing within Sixty (60) days from the date the matter is brought before the Commission.

Section 19. In cases where the LEC or CMTS subscriber pays part of the total amount due for both local and toll services rendered the amount paid shall be proportionately applied to the bill. In cases of customer nonpayment of bills for domestic and/or international toll service, the LEC or CMTS services provider shall discontinue both local and toll services.

Article V

OTHER REIMBURSEMENTS

Section 20. The obligation to provide LEC services shall remain in force for as long as the IGF, CMTS and other non-basic telecommunications services providers hold their authorization to provide their respective services or until such time that the price of the LEC service reflects actual costs.

Section 21. The foregoing provisions shall be without prejudice to the requirements of Franchise and Certificate of Public Convenience and Necessity and other requirements pursuant to existing laws, rules and regulations and hereafter be promulgated.

Section 22. All public telecommunications networks shall be interconnected in a non-discriminatory manner in accordance with

Executive Order No. 59 and its implementing guidelines

Section 23. No other company or entity shall be authorized to provide local exchange service in areas where the LECs comply with the relevant provisions of NTC MC No. 10-17-90 and NTC MC No. 10-16-90 and that the local exchange service area is not underserved.

Section 24. In local exchange service areas where there are more than one authorized LEC, the LEC networks shall be interconnected in such a manner that would ensure efficient and effective conveyance of traffic from a subscriber of one LEC to the subscriber of the other LEC.

Section 25. The numbering plan shall, in consultation with the industry be amended to allow the entry of other LECs in underserved areas, subject to the approval of the Commission.

Section 26. The public telecommunications service providers shall incorporate in their annual reports submitted to the Commission on or before 31 March of each year financial information that would make explicit the internal subsidy flows.

Section 27. Authorized public telecommunications carriers shall be required to deposit in escrow in a reputable bank 20% of the investment required for the first two years of the implementation of the proposed project. In addition to the escrow, the authorized public telecommunications carriers shall be required to post a performance bond equivalent to 10% of the investment required for the first two years of the approved project but not to exceed P500 Million. The performance bond shall be forfeited in favor of the government in the event that the authorized PTC fail to comply with the terms and conditions of the authority granted.

Section 28. All authorized inter-exchange carriers shall be required to provide facilities to link all LECs to the national and international network in accordance with MC 9-7-93.

Section 29. The provision of local exchange telephone service shall conform to the approved National Violators of this circular shall be subject to the penalties provided for in Executive Order No. 59 and its implementing guidelines. Telecommunications Development Plan (NTDP).

Article VI PENAL PROVISIONS

Section 30. Violators of this circular shall be subject to the penalties provided for in Executive Order No 59 and its implementing guidelines.

Section 31. Authorizations granted to IGF and/or CMTS operators who fail to provide local exchange service pursuant to this Circular shall be canceled after due notice and hearing.

Article VII TRANSITORY PROVISIONS

Section 32. PTC's with pending applications for IGF, CMTS and other non-basic telecommunications services need not revise their applications with the Commission. However, upon issuance of the Provisional Authority or CPCN as the case may be, they shall be given a period of three (3) months within which to submit and file the necessary applications for local exchange service in accordance with the provisions hereof.

Section 33. Existing telecommunication service providers offering IGF, CMTS and non-basic telecommunications services which are sources of subsidy shall comply with the provisions of this circular within five (5) years from the effectivity of this circular.

Article VIII FINAL PROVISIONS

Section 34. Any portion or section of this Circular which may be declared to be invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.

Section 35. All existing with the accordingly, memoranda, circulars, rules and regulations inconsistent provisions of this circular

are repealed or amended accordingly.

Section 36. This circular shall take effect fifteen (15) days after its publication in the official gazette or newspaper of general circulation, provided further that at least three (3) certified copies thereof shall be filed with the University of the Philippines Law Center.

DONE in the City of Quezon, this 17th of September in the year of our Lord, Nineteen Hundred and Ninety Three.

(sgd) SIMEON L. KINTANAR
Commissioner

EXHIBIT 3

Republic of the Philippines
CONGRESS OF THE PHILIPPINES
Metro Manila

Third Regular Session

Begun and held in Metro Manila on Monday, the twenty-fourth day of July, nineteen hundred and eighty nine.

REPUBLIC ACT NO. 6849

AN ACT PROVIDING FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF PUBLIC TELEPHONES IN EACH AND EVERY MUNICIPALITY IN THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. - This act shall be known as the "Municipal Telephone Act of 1989."

SECTION 2. Declaration of National Day Policy. - Recognizing that the benefits of modern communication technology are as important to rural development as they are to urban areas, the State shall pursue and foster, in an orderly, purposive and vigorous manner, the interconnection of all municipalities in the country through the establishment and early realization of a nationwide network of public calling stations.

SECTION 3. Projects Office. - For purposes of administering the provisions of this Act, there is hereby created a Municipal Telephone Projects Office in the Department of Transportation and Communications (DOTC) with the following functions:

- (a) Develop, in coordination with all other agencies concerned, a plan for providing public calling stations with technology capable of voice and data transmission in every municipality and, when feasible, in such barangay not otherwise served by an existing telephone exchange using appropriate technology and for this purpose formulate or cause to be formulated, engineering studies;
- (b) Undertake the implementation of the said plans and programs and toward this end, to enter into contracts subject to existing laws and regulations for the procurement of equipment, construction of facilities and the installation of the system;
- (c) Arrange for funding from any source, private, government, foreign or domestic, including official development assistance, bilateral and multilateral loans subject to applicable laws and regulations;
- (c) Prescribe and ensure compatibility with minimum standards and regulations to assure acceptable standards of construction, maintenance, operation,
- (d) personnel training, accounting and fiscal practices for the municipal telecommunications operators of public calling stations;
- (e) Furnish technical assistance and personnel training programs for the municipal telecommunications operators of public calling stations;
- (f) Monitor and evaluate local telecommunications and effect system integration and operations whenever economically and technically feasible

Provided, however, That the approval of the provincial government of the province where any or all of the functions above mentioned are to be discharge is first secured.

SECTION 4. Management of the Projects Office. - A projects Director, who shall be a person of integrity, competence and experience in technical fields related to the purposes of this Act, shall be appointed by the President of the Philippines upon the recommendation of the Secretary of Transportation and Communications. He shall have the rank, position and emoluments of an undersecretary.

The Projects Director shall have the following powers and duties;

- (a) To execute and administer the plans and projects for the realization of the policy set forth in this Act;
- (b) To direct and supervise the operation and internal administration of the Projects Office and, for this purpose, to delegate some or any of his powers and duties to appropriate subordinate officials;
- (c) Subject to the guidelines and policies established by the Secretary of Transportation and Communications, to appoint and in coordination with the Department of Budget and Management fix the number and compensation of officials and employees of the Projects Office, subject to Civil Service Law;
- (d) To prepare an annual report on the activities of the Projects Office on or before the end of the first quarter after the fiscal year completed and to submit a copy thereof to the President of the Philippines and the Congress of the Philippines; and
- (e) To exercise such other powers and duties that are proper or necessary to carry out the purposes of this Act as may be vested in him by the Secretary of Transportation and Communications.

SECTION 5. Rights of First Option. - All domestic telecommunications carriers or utilities existing at the time of the affectivity of this Act, and franchised to service a province or region WHICH shall have been certified by the National Telecommunications Commission (NTC) as rendering satisfactory and competent service in its area of operation, are hereby given, under equal conditions and circumstances, the first option to provide, install and operate public calling stations or telephones in provincial communications network which shall be capable of voice and data transmission and shall be interconnected to the public switched telephone network or other national transmission facilities. The intention to exercise the option shall be made specifically in writing to the Projects Office within six (6) months of the affectivity of this shall indicate the preferred province and the time frame of development. Private operators or franchisees of such public calling stations shall be entitled to the same benefits and privileges enjoyed by those installed and operated by Government in so far as tax concessions and/or incentives are concerned.

SECTION 6. Frequency Allocation. - In order to accelerate the implementation of this project, National Telecommunication Commission (NTC) is authorized to assign or reassign, when necessary, existing radio frequency users currently operating.

SECTION 7. Rates and Mandatory Sharing of Toll Revenue. - The NTC, subject to its standard guidelines and in consultation with the regional development councils concerned, shall fix an equitable, reasonable and uniform rate of charges for every type of call. A rate schedule shall be set for all municipal telephone calls under the following classifications:

- (a) Municipal to International;
 - (b) Municipal to Metro Manila, and other domestic long distance calls;
 - (c) Municipal to Provincial Capital;
 - (d) Municipal to Municipal;
- (1) of the same province
 - (2) of difference provinces, other than domestic long distance.

In connection with the rates, the National Telecommunications Commission (NTC), in consultation with the toll network operators or interchange carriers and the provincial government concerned, shall authorize and cause the implementation of an equitable toll revenue sharing and collection scheme. The share of the local exchange operators in toll revenues shall be remitted by the interchange carries to them within ninety days (90) form receipt.

SECTION 8. Timetable of Implementation. - The Projects Office shall install all public calling stations for provinces and municipalities not covered by private communication utilities under Section 5 hereof, such that each one of the municipalities in the Philippines still unserved by telephone at the affectivity of this Act, shall have at least one (1) public calling station or public telephone by the third year of effectively of this Act. Where resources permit, the Projects Office shall also extend the services concurrently or subsequently to other remote barangays of the country. The public calling stations shall be interconnected to the public switched telephone network or other national transmission facilities, subject to the technical interconnection standards prescribed by the NTC.

SECTION 9. Operation by Local Governments. - Provinces and municipalities are hereby authorized to set up, operate and maintain their respective public calling stations or to grant franchise to private entities for the operation and maintenance of telephone systems and/or public calling stations: Provided, That the NTC certifies that the proposed grantee is technically and financially capable of complying with all the requirements of public services.

SECTION 10. Appropriation. - The amount of two hundred million pesos (P200,000,000.00), or so much thereof as may be necessary to implement the provisions of this Act, shall be taken from the appropriations provided under Title 1 - Telecommunications of Executive Order No. 182. In addition, the sum of three hundred million pesos (P300,000,000.00), or so much thereof in equivalent foreign currencies as may be necessary, shall be source, in their order of preference, from foreign

grants, concessional loans, official development assistance, commercial loans, and/or export credits to meet the objective of this Act.

SECTION 11. Official Development Assistance. - The provisions of Executive Order No. 230 of 1986, on the power of the NEDA Board, and the rules and regulations governing the evaluation and authorization for the availment of Official Development Assistance notwithstanding, the municipal telephone program provided for in this Act shall be eligible for foreign loans and grants without further evaluation by the NEDA Board, subject to Section 21, Article XII of the Constitution.

TRANSITORY PROVISIONS

SECTION 12. Sunset Clause. - The projects Office shall not have a life exceeding ten (10) years from the date of the approval of this Act and may only be extended by act of Congress. At the options of the provincial government, the systems operating in each province shall be turned over to it, except those operating under Section 5 thereof.

SECTION 13. Separability of Provisions. - Any portion or provisions of this Act that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions and provisions hereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SECTION 14. Repealing Clause. - All acts or parts of acts inconsistent herewith are repealed or modified accordingly.

SECTION 15. Effectivity. - This act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

APPROVED,

(SGD.) RAMON V. MITRA
Speaker of the House of Representatives

(Sgd.) JOVITO R. SALONGA
President of the Senate

This Act which is a consolidation of Senate Bill No. 892 and House Bill No. 3452 was finally passed by the Senate and the House of Representatives on December 20, 1989 and December 21, 1989 respectively.

(Sgd.) QUIRINO D. ABAD SANTOS, JR.
Secretary of the House of Representatives

(Sgd.) EDWIN P. ACOBA
Approved: February 8, 1990
Secretary of the Senate

(Sgd.) CORAZON C. AQUINO
President of the Philippines

EXHIBIT 4

MEMORANDUM CIRCULAR
No. 14-7-2000

**SUBJECT: IMPLEMENTING RULES AND REGULATIONS
(IRR) FOR THE INTERCONNECTION OF
AUTHORIZED PUBLIC TELECOMMUNICATIONS
ENTITIES**

PREAMBLE

WHEREAS, The State recognizes the vital role of telecommunications in nation-building and economic development and in its desire to attain universal access, it shall promote the rapid expansion of telecommunications services in all areas of the Philippines in order to maximize the use of all available telecommunications facilities, and to ensure that every user of the public telecommunications shall have access to such facilities at a mandated standard of service and at reasonable costs;

WHEREAS, a general framework for interconnection of public telecommunications networks and public telecommunications services, regardless of the supporting technologies employed, is necessary in order to provide end-to-end inter-operability of services for users and access to all;

WHEREAS, fair, proportionate and non-discriminatory conditions for interconnection and inter-operability are key factors in fostering the development of open and competitive markets;

WHEREAS, it is important to lay down principles to guarantee transparency, access to information, non-discrimination and equality of access;

WHEREAS, with the approval and passage of Republic Act No. 7925, the Philippines has effectively liberalized the telecommunications services and has demonstrated its commitment to healthy and sustainable competition by allowing multiple operations by local service providers in partnership with firms of varying nationalities in most segments of the domestic and international telecommunications markets;

WHEREAS, the telecommunications environment is changing at an unprecedented rate driven by technological advancements, expansion of market boundaries and development of new business practices. These developments in the telecommunications sector necessitate the review of Memorandum Circular No. 9-7-93 and the formulation of a new regulatory framework for interconnection of the networks of public telecommunications entities to address the legal, economic and technical constraints that continue to hamper the continued growth and development of the sector;

WHEREAS, pursuant to the provisions of R.A. 7925 and Executive Order No. 59, Series of 1993, mandating interconnection of all public telecommunications entities and vesting to the National Telecommunications Commission with the power to ensure a larger and more effective use of affordable telecommunications facilities and to maintain an effective and healthy competition, the National Telecommunications Commission, by virtue of the powers vested upon it by law, does hereby promulgate the following implementing rules and regulations:

Article I

APPLICABILITY OF THE PROVISIONS

Section 1. These rules shall be applicable to all duly authorized public telecommunications entities as defined hereunder.

Article II

DEFINITION OF TERMS

Section 2. The following words and phrases shall have the meaning assigned to them unless the context otherwise requires:

- a. **Access Charges** - remuneration paid to a PTE by an interconnecting PTE for accessing the facilities and/or customer base of such PTE, which are needed by the interconnecting PTE for the origination, termination and/or transiting of all types of traffic derived from the interconnection.
- b. **Access Deficit** - the difference between the required revenue to recover the cost of the line service and the total revenue from retail monthly services fees and the revenue from interconnection.
- c. **Access Provider** – a PTE that is requested to provide access to its network, system, facilities and/or customer base by an access seeker.
- d. **Access Seeker** – a PTE that requests access to the network, system, facilities or customer base of another PTE.
- e. **Access Service** – service given by the access provider to enable the access seeker to avail of any or all of its services.

- f. Billing Information** – Appropriate network usage data of one PTE that is required by another PTE to facilitate customer billing with attendant acknowledgement and status reports and are exchanged between PTEs to process claims and adjustments.
- g. Commission** – the National Telecommunications Commission.
- h. Customer Premises Equipment (CPE)** - equipment located in the premises of a customer which is not part of but connected to the system or network of the PTE.
- i. Cellular Mobile Telephone System (CMTS)** – a wide area mobile radio telephone system with its own switch, base stations and transmission facilities capable of providing high capacity mobile telecommunications by utilizing radio frequencies that is neither a wireless local loop (WLL) service provided by a LEC or a trunk radio service ordinarily being provided by a trunked radio carrier.
- j. Direct Access** – the situation where a customer is directly connected to a telecommunications operator by a wire, fiber-optic or radio link to connect that customer to the public telecommunications network.
- k. Enhanced Services** – refers to a service which adds a feature or value to basic telephone service not ordinarily provided by a PTE such as format, media, conversion, encryption, enhanced security features, paging, internet protocol, computer processing and the like; provided that in the provision of such service, no law, rule, regulation or international convention to which the Philippines is a signatory, is circumvented or violated. For purposes of these rules and regulations, enhanced services shall also mean value-added services, and vice-versa.
- l. Exchange** – the entire plant and facilities used in providing telecommunications services to subscribers or customers in a calling (service) area.
- m. Exchange Access** – the offering of access to telecommunications services or facilities for purposes of origination or termination of telephone services between PTEs.
- n. Grade of Service** – the probability that a proportion of the calls will be lost or blocked in the system. The lower the proportion of loss or blockage, the better is the grade of service.

- o. Incoming Collect Calls** –telephone calls originating from a subscriber or customer of a PTE and terminating to and paid by a subscriber or customer of the terminating PTE.
- p. Incoming Paid Calls** – telephone calls originating from a subscriber or customer of a PTE and paid to that PTE.
- q. Indirect Access** – is a situation where a customer's call is routed and billed through the network of a PTE even though the call originated from the network of another PTE.
- r. Interconnection.** – the linkage, by wire, radio, satellite or other means, of two or more existing PTEs with one another for the purpose of allowing or enabling the subscribers or customers of one PTE to access or reach the subscribers or customers of the other PTE.
- s. Interconnection Links or Facilities** - facilities consisting of, but not limited to, equipment, devices and materials required to interconnect two telecommunications systems or networks of two (2) PTEs for the interchange of traffic between them.
- t. Interconnect Services** – network interconnect services, access services or access facility services.
- u. Interconnect Usage Charges** – the network usage charges applicable to direct and indirect interconnections between networks for call origination, call termination and call transit, as the case may be.
- v. Inter-Exchange Carrier (IXC)** - a PTE providing transmission and switching facilities which connect the networks of two (PTEs) that are not located within the same numbering plan area (NPA) or even if located within the same NPA, are not located within the common or overlapping service areas, enabling them to offer telecommunications services of any type, whether of voice, data or images, to each other's subscribers or customers.
- w. International Gateway Facility (IGF)** - a facility consisting of international transmission, switching and network management facilities that serve as point of entry and exit in the Philippines of international traffic between a PTE's network and point/s outside the Philippines.
- x. International Gateway Facility Operator** – a telecommunications carrier providing IGF services.

- y. Interoperability** - the technical features of a group of interconnected systems, which ensure end-to-end provisions of a given service in a consistent and predictable way.
- z. Local Calling (Service) Area** – the province within which telecommunications services are furnished subscribers under specific scheduled rates and without toll charges. For purposes of these rules, the present areas forming part of the numbering plan area “2” shall be considered a local calling (service) area of all PTEs presently authorized to provide telecommunications service in any portion of the said area.
- aa. Local Calls** – Calls originating and terminating from one and the same PTE, or two (2) separate PTEs within the same local calling area.
- bb. Local Exchange Carrier (LEC).** – a PTE providing transmission and switching of telecommunications services, primarily but not limited to voice-to-voice service, in a geographic area anywhere in the Philippines.
- cc. Major Supplier** –a PTE who has the ability to materially affect the market, directly or indirectly, for basic and/or enhanced telecommunications services as a result of: 1) its control over essential facilities; and 2) use of its position in the market.
- dd. Market Power** – the ability to raise and maintain price above the competitive level and so earn above-normal returns. It also means the ability of an operator to act with a degree of independence from competitors and consumers.
- ee. Meet Point** – a point of interconnection between two networks, designated by two PTEs, at which one PTE’s responsibility begins and the other PTE’s responsibility ends.
- ff. Meet Point Interconnection Arrangement** – an arrangement by which each PTE builds and maintains a network to a meet point.
- gg. National Toll Calls** – calls that are (1) originating from one local calling (service) area and terminating to another local calling area (service) or (2) originating from another PTE to a CMTS carrier, or vice-versa.
- hh. Network Element** – a facility or equipment used in the provision of telecommunications service including, but not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers,

databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

- ii. Network Interconnect Service** – a service which supports the physical and logical linking of networks to allow the user of one network to communicate with the user of another network (e.g. call termination).
- jj. Numbering Plan Area (NPA)** – a geographic area in the country which has been given a specific area code by the Commission.
- kk. Outgoing Collect Calls** – telephone calls originating from a subscriber or customer of one PTE and paid by the subscriber or customer of the terminating PTE.
- ll. Outgoing Paid Calls** – telephone calls originating from and paid by the subscriber or customer of the originating PTE.
- mm. Party** - a party to an interconnection agreement or dispute.
- nn. Physical colocation** – offering by an access provider that enables an access seeker to: (1) place its own equipment to be used for interconnection or access to unbundled network elements within or upon an access provider's premises, (2) use such equipment to interconnect with an access provider's network facilities for the transmission and routing of telephone exchange services, exchange access service, or both, or to gain access to an access provider's unbundled network elements for the provision of telecommunications services, (3) enter those premises, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements, and (4) obtain reasonable amounts of space in an access provider's premises for the equipment necessary to interconnection or access to unbundled elements, allocated on a first-come first served basis.
- oo. Point of Interconnection (POI)** - a point of interconnection between two (2) telecommunications networks, designated by two PTEs at which one PTE's responsibility for service begins and the other carrier's responsibility ends.
- pp. Point of Presence (POP)**– a specific point as defined on the network where a point of interconnection shall occur in such a way that such interconnection between and among PTEs can be made efficiently and effectively.

- qq. Provisioning** – involves the exchange of information between PTEs where one executes a request for a set of telecommunications products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.
- rr. Public Telecommunications Entity (PTE)** – any person, firm, partnership or corporation, government or private, duly enfranchised by law and duly authorized by the Commission to engage in the provision of particular telecommunications services to the public for compensation.
- ss. Secretariat** – Secretariat of the Commission.
- tt. Service Performance Standard** – a level of service which a telecommunications carrier, under normal conditions, is required to provide to its customers as representative of adequate services.
- uu. Settlement Process** – the payment system between interconnecting PTEs for jointly providing telecommunications services by which PTEs compensate each other for interconnection services.
- vv. System-wide Exchange Line Capacity** – total switch capacity of a LEC all over the country.
- ww. Telecommunications** – a process which enables a PTE to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design or for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means.
- xx. Telecommunications Equipment** – equipment, other than customer premises equipment, used by a carrier to provide telecommunications services including software integral to such equipment.
- yy. Telecommunications Network** – transmission systems and, where applicable, switching equipment and other resources which permit the conveyance or routing of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means.
- zz. Telecommunications Services**– services offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, consisting wholly or partly in the transmission and routing of signals on authorized telecommunications networks.

- aaa. Traffic Interchange** - all communications passing through the interconnection facilities of two (2) PTEs.
- bbb. Traffic Study** - the process of recording usage measurements which can be translated into required quantities of equipment.
- ccc. Type Acceptance** – an administrative procedure by which a telecommunications equipment is accepted for use in the country. The equipment is evaluated on the basis of type approval tests done by reputable foreign approval or certification agencies.
- ddd. Type Approval** – an administrative procedure of technical tests and/or vetting applied to items of telecommunications equipment before they can be sold or interconnected with a telecommunications network.
- eee. Users (End-Users)** - refers to consumers using or requesting publicly available telecommunications services.
- fff. Value-Added Services (VAS)** – see enhanced services.
- ggg. Value-Added Service Provider (VASP)** - an entity which, relying on the transmission, switching and local distribution facilities of a PTE, offers enhanced services beyond those originally provided for by such carriers. A PTE duly authorized by the Commission to provide enhanced services shall likewise be deemed a VASP.
- hhh. Virtual Colocation** – an offering by an access provider that enables an access seeker to: (1) designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon the former's premises, and dedicated to the latter's use, (2) use such equipment to interconnect with an access provider's network facilities for the transmission and routing of telephone exchange service, exchange access service or both, or for access to an access provider's unbundled network elements for the provision of telecommunications service, and (3) electronically monitor and control its communications channels terminating in such equipment.

Article III

GENERAL PRINCIPLES OF INTERCONNECTION

Section 3. The following are the general principles of interconnection:

- a. Interconnection should enable subscribers or customers of two (2) PTEs to communicate with each other. (*any-to-any*).

- b. Interconnection should be across interfaces of sufficient functionality (*end-to-end interoperability*).
- c. Interconnection should directly follow the principle of fair compensation, compliance on commercial obligation (*timely settlement, including payment*) and service specific usage of interconnect facilities (*no irregular and/or illegal traffic access or bypass*).
- d. PTEs should have equal responsibility to interconnect and should ensure that interconnection is carried out and in a swift and efficient manner (*equal responsibility*).
- e. A request for interconnection should be satisfied in a timely fashion (*interconnection on request*).
- f. Interconnection should be prompt, efficient and seamless to the subscriber or consumer of both of the interconnecting PTEs (*prompt, efficient and seamless*).
- g. Interconnection Agreements between PTEs should satisfy the government's telecommunications policies and its commitments or obligations under international agreements.

Section 4. It is mandatory for all duly authorized PTEs to interconnect with one another.

Section 5. Interconnection should be ensured to any technically feasible point in the network. Such interconnection must be provided by a PTE:

- a. Under non-discriminatory terms, conditions (including technical standards and specifications) and charges and of a quality no less favorable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates; and
- b. In a timely fashion, on terms, conditions (including technical standards and specifications) and cost-based charges that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components for facilities that it does not require for the service to be provided.

Article IV GENERAL PROVISIONS

Section 6. The objectives underlying these implementing rules and regulations are to:

- a. Promote and protect the interests of telecommunications consumers and users;
- b. Provide a comprehensive and transparent framework for the implementation of the interconnection policy of the State;
- c. Promote the expansion, availability and usage of all telecommunications facilities and services in the country;
- d. Promote and enhance fair and effective competition in the telecommunications industry;
- e. Ensure end-to-end interoperability of services for users at all times;
- f. Ensure that the user of any telecommunications network can be connected to the user of any other network at all times;
- g. Establish fair and non-discriminatory provisions for interconnection, and to provide for access to information, transparency and equality of access to services; and
- h. Ensure compliance with prescribed technical standards for the provision of interconnection.

Section 7. The interconnection between PTEs should result into a universally accessible and fully integrated nationwide telecommunications network for the benefit of the public.

Section 8. Within the same local calling area, PTEs should be interconnected on a direct basis, i.e., their networks are directly linked by an interconnection facility, unless interconnection through an IXC's network is more feasible or efficient; *Provided*, that no additional charges shall be passed on to end-users.

PTEs operating in two (2) different local calling areas must be interconnected through an IXC's network provided that if both PTEs are also IXCs, the interconnection shall be effected through their IXC networks.

Except as otherwise provided herein, all IXCs and IGFs shall interconnect with all other PTEs to provide subscribers or customers freedom of choice for access to toll call or long distance services; *Provided*, that all LECs shall interconnect with at least two (2) IXCs with nationwide coverage or

capability; *Provided further*, that if the LEC is a major supplier, it shall interconnect, directly or indirectly, with all IXC's.

Section 9. Interconnection among and between PTEs shall ensure that:

- a. A subscriber or customer of a PTE is able to call a subscriber or customer of any other PTE on a non-discriminatory basis;
- b. A subscriber or customer of a PTE is able to access service provided by any other PTE either directly, or indirectly by transiting, if technically feasible, the system or network of another PTE; *Provided*, that no additional burden shall be passed on to end-users; and
- c. The transmission of calls across and within the respective networks should be transparent and seamless to both calling and called parties.

Section 10. Obligations of All PTEs. – In addition to the obligations and duties imposed by other laws, decrees, orders, rules and regulations, all PTEs are obliged:

- a. To provide interconnection at cost-based charges in a manner sufficiently unbundled;
- b. To negotiate in good faith with other PTEs regarding the terms and conditions of interconnection agreements;
- c. To interconnect directly with the facilities and equipment of other PTEs to allow access to all types of services available to the customers of both parties;
- d. To install network features, functions, and capabilities necessary for interconnection;
- e. To provide non-discriminatory access to network elements at any technically feasible point on charges, terms and conditions that are just and reasonable;
- f. To provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications service;
- g. To make available to other PTEs on a timely manner all data and other relevant information necessary to ensure an efficient, timely and reliable interconnection; and

- h. Not to abuse information obtained from competitors in relation to interconnection with the latter.

Section 11. Obligations of a Major Supplier. - In addition to the obligation imposed in Section 10, a major supplier shall not commit acts constituting anti-competitive practices such as:

- a. engaging in anti-competitive cross subsidization to its subsidiaries or affiliates;
- b. engaging in anti-competitive cross-subsidization with other PTEs; and
- c. other acts similar to the foregoing.

Section 12. An access provider must:

- a. treat each party seeking interconnection on a basis that is non-discriminatory and no less favorable as to terms, conditions and rates than the treatment which the access provider affords to itself, its parent, subsidiaries, affiliates or to any other PTE to which it is providing a materially equivalent service;
- b. treat each subscriber or customer of any interconnecting party on a basis that is non-discriminatory and no less favorable than the treatment which it affords to its own customers or the customers of any other PTE to which it is providing a materially equivalent service;
- c. deal with each interconnecting party on a non-discriminatory basis in relation to the technical and operational quality of the services which it provides, including the quality, availability, time of provision, and technical standards and specifications;

Section 13. No PTE shall disconnect, disrupt or discontinue an interconnection or bar or in any manner impede the access by its subscribers or customers to subscribers or customers of a PTE interconnected with it without the prior written approval of the Commission.

Article V

INTERCONNECTION AGREEMENTS AND MANDATES

Section 14. Procedure for Negotiation, Arbitration and Approval of Interconnection Agreements, whether for basic or enhanced interconnection:

- (I) Agreements arrived at through Negotiation:

- a. Subject to existing technical, commercial and operational rules or those which may hereafter be promulgated by the Commission, PTEs may, on their own initiative, negotiate and enter into an agreement for the interconnection of their networks or facilities.
- b. An access seeker shall serve the access provider its request/demand for interconnection, furnishing the Commission a copy thereof with proof of service of said notice to the other party in accordance with the provisions of Paragraph VI of this section. The request shall contain the following:
 - 1. Copies of the access seeker's legislative franchise and CPCN /PA;
 - 2. System or network configuration;
 - 3. Proposed point/s of interconnection;
 - 4. Trunk requirements and signaling system;
 - 5. Proposed traffic routing and numbering scheme;
 - 6. Traffic forecast and assumptions used for a period of at least five (5) years;
 - 7. Traffic types and systems covered;
 - 8. Proposed interface;
 - 9. Proposed implementation schedule;
 - 10. List of existing exchanges which are suitable for interconnection including the number of lines available; and
 - 11. Compensation scheme, proposed access charge or settlement procedure.
- c. Within ten (10) days from receipt of the request or demand for interconnection, the access provider shall serve to the access seeker its counter-proposal or reply.
- d. Within a period of ninety (90) days from the time of receipt of a copy of the notice by the Commission, the parties shall discuss,

negotiate and execute an interconnection agreement and submit the same to the Commission for approval.

- e. If by the date of the expiration of the interconnection agreement, the parties shall have failed to extend its term or execute an entirely new one, the interconnection agreement except for the compensation scheme thereof shall be deemed extended and shall remain in full force and effect until the parties have extended the same or executed an entirely new agreement. The new and/or revised compensation scheme as agreed upon by the parties shall retroact to the date following the expiration of the old agreement.
 - f. The parties are encouraged to avail themselves of worldwide industry best practices for guidance in interconnection negotiations and development of procedures for operations and maintenance, and testing.
- (II) Mediation. –In the interest of public service the Commission may, at its own initiative and at any stage in the negotiation, intervene in the same and mediate between the parties.
- (III) In cases where the two (2) PTEs refuse to negotiate for the interconnection of their networks, the Commission may, upon the complaint of any interested party or upon its own initiative, intervene and assume jurisdiction over the matter and immediately direct physical interconnection of the networks of the parties under such terms and conditions it may deem proper under the circumstances.

Nothing in this paragraph shall, however, prevent the parties to negotiate and execute an interconnection agreement and submit the same to the Commission for approval. For this purpose, the parties shall be given a period of ninety (90) days from receipt of notice of the filing of the complaint within which to negotiate and execute an interconnection agreement; *Provided*, that until an interconnection agreement is executed the interconnection mandate adverted in the immediately preceding paragraph shall remain in full force and effect.

- (IV) Approval by the Commission – Any interconnection agreement entered into by the parties through negotiation shall be submitted to the Commission for approval within ten (10) days from execution thereof. The Commission may disapprove the agreement on any of the following grounds:

- a. The agreement or portion thereof is contrary to law, rules and regulations, public morals and safety;
- b. The agreement is not consistent with national security, public interest and convenience and necessity;
- c. The agreement does not contain the minimum provisions set forth in the immediately preceding section;
- d. The agreement or a portion thereof discriminates against a PTE which is not a party to the agreement;
- e. The compensation scheme or interconnection rates or charges agreed upon are unreasonable, not cost-based, and/or discriminatory; or
- f. Other just and valid causes in the interest of public service and convenience.

The Commission shall notify the parties of its approval or disapproval of the interconnection agreement, or any of its terms and conditions, within thirty (30) days from its submission. Otherwise it shall be deemed approved.

(V) Compulsory Arbitration and Interconnection Mandate:

- a. Proceedings for compulsory arbitration may be initiated *motu proprio* by the Commission against the parties or by any formal petition by any interested person/s or local government unit where the parties operate should they fail to reach an agreement within the ninety (90) day period above-provided.

Immediately thereafter, the Commission shall assume jurisdiction over the case, immediately direct the provisional interconnection of the parties' networks and declare the terms and conditions, commercial, technical or otherwise, that shall govern the interconnection of the parties.

The Commission shall immediately notify the parties thereof and serve upon them copies of the petition or complaint with an order directing them to file their respective responsive pleadings within a non-extendible period of (10) days from receipt thereof.

The case shall be deemed submitted for resolution after the filing of the responsive pleadings, unless the Commission

determines the need for the parties to file reply and rejoinder, in which case the matter is deemed submitted for resolution upon the filing of the latter pleading.

- b. In all other cases the proceedings may be commenced by the filing of a verified petition by a party with supporting documents and papers and must contain the following:
 - 1. the names of the parties;
 - 2. unresolved issues and respective position of the parties with respect to those issues; and
 - 3. other matters related to the interconnection that the parties may wish to submit for resolution.

The respondent shall file its answer to the petition within a non-extendible period of ten (10) days from receipt of a copy of thereof and provide additional information as it deems necessary for the expeditious resolution of the matter. After the lapse of ten (10) days, the case is deemed submitted for resolution regardless of whether or not the respondent was able to file its responsive pleading.

- c. Within a period of thirty (30) days from the time it is submitted for resolution, the Commission shall resolve the petition through the issuance of an Interconnection Mandate ordering the parties to interconnect with each other under such terms and conditions set by the Commission. The resolution shall be final and immediately executory.
- d. In the exercise of its duty to mandate interconnection among disputing telecommunications carriers, the Commission shall take into account the following, among others:
 - 1. the interest and convenience of the public;
 - 2. the necessity of interconnection;
 - 3. the desirability of stimulating innovative market offerings and of providing users with a wide range of telecommunications services both at national and local level;
 - 4. the availability of technically and commercially viable alternatives to the interconnection requested;

5. the desirability of ensuring equal access arrangements;
6. the need to maintain the integrity of the public telecommunications network and the interoperability of services;
7. the nature of the request in relation to the resources available to meet the request;
8. the relative market positions of the parties;
9. the promotion of competition; and
10. the need to achieve and maintain universal access.

- e. In the exercise of its powers, the Commission shall exert all efforts towards the amicable settlement of all issues relating to interconnection.

(VI). The interconnection agreement or interconnection mandate may be revised, amended or revoked by the Commission for just and valid cause after due notice and hearing in the interest of public service.

Section 15. The following shall be the minimum terms and conditions of interconnection agreements and interconnection mandates:

(I) General Provisions

- a) commercial and financial relations, and notably the terms of payment and the billing and collection procedures;
- b) requirement concerning the exchange of information between the two operators and the corresponding frequency or periodicity of notice;
- c) procedures to be followed in the event of alterations being proposed to the interconnection offer of one of the parties;
- d) definition and limitation of liability and indemnity between operators;
- e) procedures and legal remedies in case of degradation of service;
- f) intellectual property rights, whenever applicable;

- g) duration, conditions and mechanics of re-negotiation of interconnection agreements; and
 - h) provisions governing requests and/or offers for new types of interconnection.
- (II) Provisions on Interconnection Services Provided and the Corresponding Remuneration
- a. provisions governing access to basic services: switching and, for public network operators, leased lines;
 - b. provisions governing access to supplementary services;
 - c. provisions governing billing services for third parties; and
 - d. provisions governing colocation.
- (III) Provisions on the Technical Aspect of Interconnection
- a. measures implemented to allow users equal access to the various networks and services and equivalent formats;
 - b. measures to ensure compliance with the essential requirements;
 - c. comprehensive description of the interconnect interface;
 - d. the quality of the services provided including, but not limited to availability, security efficiency and synchronization; and
 - e. traffic routing arrangements
- (IV). Arrangements for the Establishment of Interconnection
- a. provisions governing service provision: traffic forecasting arrangements and the implementation of interconnect interfaces, procedures concerning the identification of the termination points of leased lines and the time frame for provision;
 - b. the designation of the points of interconnection and the description of the physical arrangements for interconnection;
 - c. arrangements for the reciprocal sizing of interface equipment and the systems common to each network so as to maintain the

quality of service provided for in the interconnection agreement as well as compliance with the essential requirements;

- d. arrangements for testing the operation of interfaces and the interoperability of services; and
- e. arrangement for clearing and recording faults.

Article VI

MEASUREMENT OF CALLS AND COLLECTION OF CHARGES

Section 16. The parties shall measure both outgoing and incoming calls from their respective networks.

Section 17. Each party shall undertake the billing and collection of payments for all outgoing paid calls made by its own subscriber or customer and, if agreed upon by the parties, incoming collect calls made by a subscriber or customer of another party. Unless otherwise agreed upon, the billing and collection of payments for outgoing calls made by a subscriber or customer of a party but using the IXC or IGF facility of another party, shall be the responsibility of the party-IXC or party-IGF, as the case may be.

Section 18. The parties shall submit to each other settlement statements within sixty (60) days from the end of the month to which the statement pertains. The data required to be included in the statement shall be mutually agreed upon by both parties. In the event a party fails to submit the settlement statement within the said period, any available data for purposes of reconciliation and statement shall be used. The party who failed to submit the data shall have the right to contest or dispute the reconciled data within three (3) months from transaction month. Thereafter, said party shall be barred to dispute the data.

If the party with a receivable does not agree with the settlement statements of the other party, it shall send its own reconciliation statement to the latter within sixty (60) days from receipt of the statement.

A party with payable balance shall pay all undisputed calls within thirty (30) days from receipt of the billing statement sent by the party with receivable.

In cases where the statements of the parties do not reconcile, the following rules shall govern:

- a. If the variance is four percent (4%) of the amount payable as reflected in the books of the payor or lower, the party with the (payable) balance shall pay the lower of the two amounts reflected separately in the respective reconciliation statement of the parties;
- b. If the variance is more than four percent (4%) but not more than seven percent (7%) of the amount payable, the party with (payable) balance shall pay the lower of the two amounts reflected separately in the respective reconciliation statements of the parties plus fifty percent 50% of the amount of the variance;
- c. If the variance exceeds seven percent (7%), the parties shall be given a period of thirty (30) days to settle the dispute. If the parties fail to settle their dispute, the same shall be referred to the Commission for arbitration.
- d. In cases falling under (a) and (b), payment of the party with a balance shall be made within thirty (30) days from receipt of the reconciliation statement sent by the party with receivable; *Provided*, that the payment by the party with a balance shall be without prejudice to the right of the party with receivable to collect the remaining balance and for this purpose, the parties shall be given thirty (30) days to settle their dispute. If the parties fail to settle their dispute, the same shall be referred to the Commission for arbitration.

The proceedings mentioned in this section shall be summary in nature and the Commission shall resolve the matter within a period of thirty (30) days from the time the same is submitted for resolution

Nothing in this section shall prevent the parties from their settling their disputes among themselves by continuous reconciliation of their statements.

Section 19. Except as provided in the preceding section, the party with a (payable) balance shall settle the amount due within thirty (30) days after the reconciliation of the statements.

Section 20. For International Calls: The collection of payments from the Foreign Administrations for all incoming paid calls and outgoing collect calls shall be the responsibility of the IGF operator that received/sent said international paid calls from/to said Foreign Administration. The parties shall settle the interconnect charges for a particular month within thirty (30) calendar days from receiving the statements also for said particular

month from all its foreign correspondents through a toll journal mutually agreed upon by both parties. Within fifteen (15) days from receipt of the toll journal, the party with a payable shall send to the other party a reconciliation statement reflecting the amount computed as payable, otherwise, the toll journal shall be deemed accepted by the party with a receivable.

- Section 21. The modes of payments including the interests, penalties or surcharges for late payments shall be mutually agreed upon by both parties.

Article VII

ESTABLISHMENT AND LOCATION OF POINTS OF INTERCONNECTION

- Section 22. POIs must be established and maintained at any mutually agreed technically feasible point/s in the carrier's system and/or network or at point/s as may be mandated by the Commission.

- Section 23. In the interconnection agreement or interconnection mandate between LECs and IXC's or IGF operators, the LEC shall be required to program and activate in its switches or system the access code of the IXC or IGF operators, as the case may be, as assigned by the NTC, to enable the LEC subscriber or customer to access the long distance carrier of his choice.

In the event that an LEC upgrades to stored program control (SPC) exchanges, the parties shall implement equal access preprogrammed option and still allow the subscriber at the time of his call freedom of selection of any other inter-exchange or international gateway operator.

- Section 24. The access seeker must provide sufficient details to the access provider in relation to a POI/s and/or POP/s to enable the latter to evaluate the nature and extent of network conditioning that may be required and to estimate the cost of establishing the POI/s and /or POP/s.

- Section 25. For IXC-to-IXC interconnection, each carrier shall bear its own port, datafill and switch costs to support a POI and the parties shall share the cost of the interconnect capacity equally.

Article VIII

INTERCONNECTION OF THE SYSTEMS

- Section 26. The interconnection links and trunks needed to effect interconnection shall be provided by each of the interconnecting parties in accordance with their respective traffic requirements on 50-50 basis unless otherwise provided in these rules. However, other terminating facilities required for the

interconnection that are to be installed at their respective premises shall be borne by each party.

- Section 27. In inter-exchange interconnections, the IXC shall provide interconnecting facilities up to the main distribution frame (MDF) of the LEC; *Provided*, that the latter has a total system-wide exchange line capacity not exceeding five thousand (5,000); *Provided further*, that this provision shall apply only to LECs that do not offer any other services except VAS.

For LECs with more than five thousand (5,000) total system-wide exchange line capacity or offering telecommunications services other than VAS, the provisions of the immediately preceding section shall apply, except as may be otherwise agreed upon by the parties.

- Section 28. The IGF operator shall provide interconnecting trunks up to the Main Distribution Frame (MDF) of the LEC where the IXCs cannot provide the required facilities. In case a LEC also is an IXC, the interconnection of the IGF operator to the LEC shall be through the latter's IXC facility.

If the IGF operator would want to interconnect directly with the LEC, the provisions of Section 27 shall apply.

- Section 29. Unless specified by the Commission, the point of interconnection (POI) shall be as follows:

1.1 LEC to LEC

- 1.1.1 Single-switch LEC to Single-switch LEC within a local (calling) service area.

The LECs shall interconnect their local switches directly.

- 1.1.2 Single-switch LEC to Multi-switch LEC within a local (calling) service area.

The switch of the single-switch LEC shall be interconnected to at least one (1) tandem switch of the Multi- switch LEC.

- 1.1.3 Multi-switch LEC to Multi-switch LEC within a local (calling) service area.

At least one (1) tandem switch of both LECs shall be interconnected.

1.2 LEC to IXC

The LEC network shall be interconnected to the nearest point in the IXC network, provided that the POI is established within the LEC's service area.

1.3 LEC to IGF

The LEC network shall be interconnected to the IGF network directly or indirectly through the IXC network, provided that the POI is established within the LEC's service area.

1.4 LEC to CMTS

1.4.1 Single-switch LEC to CMTS

The LEC switch shall be interconnected to the CMTS network or through an IXC at the nearest point in the CMTS network, provided that the POI is established within the LEC's service area.

1.4.2 Multi-switch LEC to CMTS

The tandem switch of the multi-switch LEC shall be interconnected to the CMTS network or through an IXC at the nearest point in the CMTS network, provided that the POI is established within the LEC's service area.

1.5 LEC to Trunk Radio Network (TRN)

1.5.1 Single-switch LEC to TRN

The LEC switch shall be interconnected to the TRN network or through an IXC at the nearest point in the CMTS network, provided that the POI is established within the LEC's service area.

1.5.2 Multi-switch LEC to CMTS

The tandem switch of the multi-switch LEC shall be interconnected to the TRN network or through an IXC at the nearest point in the TRN network, provided that the POI is established within the LEC's service area.

1.6 LEC to Radio Paging Network (RPN)

1.6.1 Single-switch LEC to the RPN

The switch of the single-switch LEC shall be directly interconnected to RPN.

1.6.2 Multi-switch LEC to the RPN

The RPN shall be interconnected to the nearest tandem or local switch of the multi-switch LEC.

1.7 IXC to IXC

The IXC networks shall be interconnected at all regions if technically feasible. Regions shall refer to political, autonomous and/or administrative regions.

1.8 IXC to IGF

The IGF shall be interconnected to the nearest point in the IXC network.

1.9 CMTS to CMTS

The CMTS networks shall be interconnected at all technically feasible points in their networks or through an IXC.

2.0. TRN to CMTS

Their networks shall be interconnected at all technically feasible points.

2.1 Others

Except as already provided above, two (2) PTEs operating in separate or non-overlapping service areas shall be interconnected through the facility of an IXC.

Article IX
COST OF INTERCONNECT FACILITIES

Section 30. Cost of Interconnect Facilities and Ownership

- a. Unless otherwise agreed upon by the parties or provided in existing memorandum circulars, the parties shall jointly and equally provide and share the costs of the interconnect facilities necessary to interconnect the systems of both parties: *Provided*, that in an interconnection between an IXC and a LEC with less than five thousand (5,000) total system-wide exchange line capacity and does not offer or provide any other telecommunications services except VAS, the former shall shoulder the cost of interconnection.

- b. As an alternative, the parties may agree that one party (advancing party) shall, at its own expense, advance the costs of the interconnect facilities.
- c. Beneficial and legal ownership of the portion of the interconnect facilities at the premises of the other party (reimbursing party) shall vest upon full payment of half, or as maybe mutually agreed upon, of the costs of interconnection.
- d. No fees shall be collected from a party for the colocation of its interconnection facilities within the premises of another party if such facilities are indispensable to effect or implement the interconnection of the parties' basic services.

Article X

EFFICIENT PROVISIONING OF CAPACITY

- Section 31. Interconnection shall be effected for sufficient capacity and in sufficient number to meet all reasonable traffic demands for conveyance of messages between the systems of the PTEs involved, and shall be implemented within a reasonable time frame.
- Section 32. The Commission in consultation with the industry shall develop codes of practice to be used in forecasting, ordering and provisioning of interconnection capacity.
- Section 33. If warranted, a PTE may request another PTE to which it is interconnected, the provisioning or installation of additional interconnection capacity. The request should contain the following information:
- a. the number interconnection capacity required to meet additional demand ;
 - b. the approximate date the additional interconnection capacity required must be provisioned or activated; and
 - c. a traffic study adverted to in Sec. 40 below
- Section 34. All requests by a PTE for the provisioning or activation of additional interconnection capacity shall be filed with the Commission not later than the day the same was served on the other party.
- Section 35. The access provider must provide the access seeker with the following information within ten (10) days from the time of receipt of the latter's request copy furnished the Commission:
- a. whether it is willing to grant the request;

- b. whether it will be able to do so within the time frames required by the access seeker; and
- c. in the event the access provider is not willing or able to agree to the request or it is unable to do so within the time frame requested, specific and detailed justification for its unwillingness or inability.

Section 36. Where the access provider has informed the access seeker that it is able to provide capacity, it must ensure that the system conditioning and provisioning procedures required to provide capacity is undertaken within the agreed period.

Section 37. The provisions of Section 14 insofar as they are not inconsistent with the provisions of this Article shall govern the negotiation, arbitration and approval of agreements for the provision or installation of additional interconnection capacity. However, if there is no agreement within the aforementioned ten (10) day period, the Commission shall intervene and decide on the matter.

Section 38. A PTE must provide reasonable advance notice to all other PTEs with which it is interconnected of planned changes to its telecommunications network that may have material impact on the telecommunications services of the latter.

Section 39. Grade of service of P.01 or one per cent (1%) blocking must be provided by both PTEs to each other starting at the point of interconnection and throughout their respective networks.

Section 40. Capacity –

- a. The parties shall ensure that sufficient trunk and interconnect facilities are supplied at each point of interconnection to meet the prescribed grade of service for conveyance of traffic between the parties.
- b. In the event of failure to meet the prescribed grade of service, both parties shall mutually agree to immediately implement solutions to achieve the required grade of service.
- c. Both parties shall exchange traffic and facility forecasts including actual traffic measurements and parameters at least once every three (3) months to facilitate allocation of facilities for future requirements, as well as basic information such as the description of the existing and future network relevant to interconnection and list of exchanges (existing and planned) suitable for interconnecting including lines available.

- d. Both parties shall provide additional circuits based on traffic measurements and studies to be conducted covering a period of thirty (30) days separately but simultaneously by both parties. If traffic data from both parties do not tally, the number of additional trunks to be provided shall be determined using agreed traffic data which shall in no case be less than half the difference between the traffic data from both parties plus lower of the forecasted traffic data. The additional trunks shall be placed in operation not later than fifteen (15) days from date of agreement.
- e. LEC to LEC: If traffic data are not available, the initial interconnection trunk capacity shall be calculated using Erlang B Equation with the grade of service at P.01, and assuming that the traffic per subscriber line is 0.12 Erlang during busy hour.
- f. Other Types of Network Interconnection: The parties shall initially mutually agree on the number of interconnect trunks/subscriber lines. Additional trunks/subscriber lines shall be based on actual measured traffic referred to in Paragraph (c).

Article XI

INTERCONNECT SERVICE CHARGING GUIDELINES

- Section 41. Interconnect service charges shall be set so as to promote efficient and sustainable competition for the benefit of the public, and promote economic and efficient network use.
- Section 42. Charges in Interconnection Agreements shall respect the principles of objectivity, transparency, reciprocity and non-discrimination. Undue imposition of excessive charges is not allowed.
- Section 43. The pattern for interconnect service charges should match as closely as possible the pattern of underlying costs incurred such that when a fixed cost is incurred, a fixed charge should be imposed and when a usage cost is incurred, a usage charge should be imposed.
- Section 44. All charges for interconnect services shall be transparent and unbundled so that the interconnecting PTE does not have to pay for any network elements, equipment, facility or component it does not need for interconnection.
- Section 45. The specific charges for interconnect services shall be based on the long run incremental costs of providing the services. This requirement shall not be imposed until such time that the Commission prescribes a specific cost methodology.

Section 46. The interconnect services shall be classified into basic or ancillary interconnection service:

Basic interconnection service refers to regular call conveyance services and include call origination and call termination of basic telecommunications services

Ancillary interconnection service refer to the conveyance of traffic involving enhanced services, or to enable a party to offer other special or ancillary services such as Equal Access, Carrier Pre-subscription, Number Portability, Directory Inquiry, Operator-Assistance and Emergency Services, or use of certain network elements including call related data bases not essential for basic interconnection services. Provision of ancillary service interconnection shall be dependent on the service provider.

Article XII

CHARGES FOR BASIC INTERCONNECTION SERVICE

- Section 47. The charges for basic interconnection service shall be by way of access charges for network interconnect usage on interconnected networks and shall consist of discrete charges, for call origination, call transiting and call termination, and a network interconnect subsidy for the LEC, if it be the other party to the interconnection but this subsidy shall not apply where the interconnected networks are both LECs. The LEC shall be entitled to such subsidy albeit it is at the same time an IGF and/or CMTS operator.
- Section 48. IGF and CMTS operators (who are themselves required to provide LEC service) shall not be exempt from the requirement to provide a network interconnection subsidy when they interconnect with the local exchange of other carriers.
- Section 49. The interconnect subsidy shall be prescribed by the Commission for access deficit, high cost service areas and universal access support as required.
- Section 50. National and international long distance calls and CMTS calls originated and/or terminated by PTEs shall include the appropriate interconnect subsidy which shall be collected and remitted to the LECs.
- Section 51. Where an access provider offers several services that are in competition with the services of the access seeker, the same interconnect service charges shall be imputed to the access seeker's competing service through its internal transfer pricing arrangements between different categories of service.

ARTICLE XIII
CHARGES FOR ANCILLARY INTERCONNECTION SERVICES

- Section 52. The charges for ancillary interconnect services should be based on the costs of providing the specific interconnect services requested by the Access Seeker, which may include:
- a. Non-recurring (one-time) and recurring (rental) costs of implementing the physical interconnection, such as engineering, specific equipment, signaling resources, compatibility testing and connection maintenance; and
 - b. Variable charges for ancillary and supplementary services, such as directory and operator assistance, data collection, billing, switched-based and advanced services whenever applicable.

Article XIV
TECHNICAL SPECIFICATIONS AND
OPERATIONAL REQUIREMENTS

- Section 53. The interconnecting parties shall maintain and operate their facilities in accordance with their respective obligations in their interconnection agreement duly approved or an interconnection mandate issued by the Commission and shall comply with the applicable technical standards specified in NTC MC 10-17-90 (Service Performance Standards) and NTC MC 10-16-90 (Technical Standards) and such other standards that the Commission shall hereafter prescribe.
- Section 54. The interconnecting parties shall:
- a. cooperate and provide facilities in their respective system for testing;
 - b. agree on standard procedures on trouble reporting, testing and see to it that the information are shared between them to facilitate the efficient routing of messages over all points of connection;
 - c. exchange traffic and facility forecasts on a semi-annual basis to facilitate allocation of facilities for future requirements, as well as provide basic information such as description of the existing and future network relevant to interconnection and list of exchanges, existing and planned, suitable for interconnection including the number of lines available; and
 - d. provide additional circuits based on traffic measurements and studies to be conducted covering a period of thirty (30) days separately but

simultaneously by both parties. The parties shall compare study results and agree on the number of circuits to be added

Misrouted or unauthorized traffic shall not be considered in the computation for determining the required number of circuits.

In the event that the parties cannot reach an agreement, the matter shall be brought by any or both of the parties to the Commission for arbitration.

The implementation of the additional circuits shall be completed within the next fifteen- (15) days after the number of circuits has been agreed upon.

In the event that the interconnection trunks are underutilized with reference to the mandated grade of service, the excess trunks may be deactivated within fifteen (15) days from receipt of notice in writing from either party; *Provided*, that a party requesting disconnection of underutilized trunks can show by convincing evidence that either the disconnected circuits are urgently needed for other purposes by the requesting party or that the measured traffic and the historical growth of the affected circuit has shown a consistent record of underutilization over a period of at least six (6) months;

- Section 55. PTEs who do not meet the prescribed service performance and technical standards shall be required to upgrade their facilities to comply with national standards within a period of time as may be determined by the Commission taking into consideration the attendant circumstances.

Article XIV

ACCESS TO NETWORK ELEMENTS ON UNBUNDLED BASIS

- Section 56. An access provider may provide to an access seeker, for a provision of a telecommunications service, access to its network elements on an unbundled basis.
- Section 57. The provision of access to unbundled network elements includes the provision of a connection to an unbundled network element independent of the access provider's providing interconnection to the access seeker.
- Section 58. An access provider shall provide an access seeker access to an unbundled network element, along with all of the unbundled elements features, functions, and capabilities, in a manner that allows the requesting PTE to provide any telecommunications service that can be offered by means of that network element.

- Section 59. An access provider may provide, on such commercial terms and conditions that are just, reasonable and non-discriminatory, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request by an access seeker.
- Section 60. Unless otherwise agreed upon by the parties, access to unbundled network elements shall be linked through “meet point” interconnection arrangements, provided that in case the access provider is a LEC, the point of interconnection shall be established within the LEC’s service area
- Section 61. A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on the network of the access provider is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points.
- Section 62. An access provider that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the access provider’s network must prove to the Commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.
- Section 63. An access provider shall not be required to provide for physical colocation of equipment necessary for interconnection access to unbundled network elements at its premises if it demonstrates to the Commission that physical colocation is not practical for technical reasons or because of space limitations. In such cases, the access provider shall be required to provide virtual colocation, except at points where the access provider proves to the Commission that virtual colocation is not technically feasible. If virtual colocation is not also technically feasible, the access provider shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.
- Section 64. Existing agreements for the provision of access to network elements on a bundled basis shall continue to be in force and effect until such time that the Commission shall have reestablished rates and settling procedures which will provide for the economic viability of PTEs and a fair return of their investments.

Article XV

STANDARDS OF PHYSICAL AND VIRTUAL COLOCATION

- Section 65. Subject to fair and non-discriminatory compensation arrangements, and to the extent technically feasible an access provider shall provide physical colocation and virtual colocation to access seekers on a first come-first served basis; *Provided*, that in case the compensation arrangements for

colocation are not contained in the interconnection agreement, the delay in the negotiation for and execution of compensation arrangements shall in no way be a cause for the delay in the execution of interconnection agreement and actual interconnection of the parties.

Section 66. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

- a. Transmission equipment including, but not limited to optical terminating equipment and multiplexers; and
- b. Equipment being colocated to terminate basic transmission facilities.

Section 67. Nothing in these rules shall be construed to require an access provider to permit colocation of switching or billing equipment or equipment used to provide enhanced services.

Section 68. When providing virtual colocation, an access provider shall, at a minimum, install, maintain, and repair co-located equipment identified in Section 66 within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the access provider.

Section 69. An access provider shall allocate space for the colocation of the equipment identified in Section 66 of this section in accordance with the following requirements:

- a. An access provider shall make space available within or on its premises to access seekers on a first-come, first served basis; *Provided*, that the access provider shall not be required to lease or construct additional space to provide for physical colocation when existing space has been exhausted;
- b. To the extent possible, an access provider shall make contiguous space available for access seekers that seek to expand their existing colocation space;
- c. When planning renovations of existing facilities or constructing or leasing new facilities, an access provider shall take into account projected demand for colocation for equipment;
- d. An access provider may retain a limited amount of floor space for its own specific future needs or uses; *Provided*, that the it may not reserve space for future use on terms more favorable than those that apply to other PTEs seeking reserve colocation space for their own future use;

- e. An access provider shall relinquish any space held for future use before denying a request for physical colocation on the grounds of space limitations; and
 - f. An access provider may impose reasonable restrictions on the warehousing of unused space by co-locating PTEs.
- Section 70. An access provider shall permit co-locating PTEs to co-locate equipment and connect such equipment to unbundled network transmission elements obtained from the access provider, and shall not require such PTEs to bring their own transmission facilities to the premises of the access provider in which they seek to co-locate equipment.
- Section 71. Whenever possible, an access provider may permit a co-locating PTE to interconnect its network with that of another co-locating PTE at its premises and to connect its co-located equipment to the co-located equipment of another PTE within the same premises; *Provided*, that the co-located equipment is also used for interconnection with the access provider or for access to its unbundled network elements.
- Section 72. An access provider shall provide the connection between the equipment in the co-located spaces of two or more PTEs, unless it permits one or more of the co-locating carriers to provide this connection for themselves.
- Section 73. An access provider is not required to permit a co-locating PTE to place their connecting transmission facilities within its premises outside of the actual physical colocation space.
- Section 74. An access provider may require security arrangements to separate a co-locating telecommunication carrier's space from its facilities.
- Section 75. An access provider shall permit a co-locating PTE to subcontract the construction of physical colocation arrangements with contractors approved by it; *Provided*, that it shall not unreasonably withhold approval of contractors. Approval by an access provider shall be based on the same criteria it uses in approving contractors for its own purposes.

Article XVI

OPERATION OF AN INTERNATIONAL GATEWAY

- Section 76. Interconnection among telecommunications carriers shall be effected in such a manner that it permits re-routing of call from an IGF operator which is rendered inoperative whether in whole or in part in the event of strikes, lockouts, disasters, calamities and similar causes to other IGF operators.

Article XVII FACILITIES

- Section 77. Unless otherwise agreed, each party shall be responsible for the construction, operation and maintenance of interconnection equipment and facilities located or installed within its premises to ensure adequate, reliable, and efficient service to the public at all times. Any modification, substitution or addition of interconnection equipment and facilities required shall be mutually agreed upon by both parties.
- Section 78. Each party shall take all necessary steps precautions and safeguards in the location, construction and maintenance of its equipment, and insure their safety from natural and human hazards and other forms of interference and disruptions.

Article XVIII MAINTENANCE, FAULT REPORTING AND CLEARANCE PROCEDURES

- Section 79. The parties shall mutually agree on the maintenance procedure to be followed strictly observing and complying with the service performance standards prescribed by the Commission and the internationally accepted performance standards.
- Section 80. The parties shall exert all reasonable efforts necessary to maintain the interconnection facilities in efficient working order and to repair the same in prompt and effective manner. Maintenance of Interconnection facilities includes, but not limited to, routine meter readings, minor repairs, minor technical adjustments and observance of proper cleanliness of the equipment/radio stations.
- Section 81. All fault reporting that affects traffic flow must be exchanged between the parties and all reported faults shall be dealt with promptly in accordance with procedures to be agreed by the parties. The parties shall coordinate with and assist each other whenever possible in the identification and rectification of faults on interconnect links and/or transmission facilities.

When one party has cleared the fault, positive confirmation should be given to the other party. Updates of fault clearances shall be made available to the other party upon request.

Article XIX
FORCE MAJEURE

Section 82. The obligations of the parties to an interconnection agreement shall be considered relieved and discharged upon the occurrence of any of the following events:

- a. Condemnation of either party's premises by any authority having the power of eminent domain to the extent that it directly and adversely affects the performance of the obligations or exercise of the rights of the parties;
- b. Actions taken in compliance with any valid order or regulation of the Commission or any duly constituted authority of the Republic of the Philippines;
- c. Invasion by a foreign power of the country existence of a state of war in the Philippines to the extent that it directly and adversely affects the discharge of the obligations and exercise of the rights of the parties;
- d. Any action taken by a local or national governing body which tends to prevent the continued use of the properties of either party for the purpose contemplated herein to the extent that it directly and adversely affects the discharge of the obligations and exercise of the rights of the parties;
- e. Rebellion or insurrection which directly affects the performance of the obligations and exercise of rights of the parties; and
- f. Acts of God to the extent that they directly and adversely affect the discharge of the obligations and exercise of the rights of the parties.

Article XX
CONFIDENTIALITY OF INFORMATION

Section 83. All information provided by one party to another in relation to interconnection between them must be treated as strictly confidential and shall not be disclosed or divulged to any third party unless it is with prior knowledge and written consent of the party providing the information or the disclosure thereof is required law or by any lawful order of any competent authority.

Article XXI

PENALTIES

- Section 84 Any violation of these rules and those promulgated by the Commission pursuant to Executive Order No. 59, Republic Act No. 7925 and their implementing rules and regulation shall, upon due notice and hearing, be subject to any or combinations of the following penalties:
- a. Administrative fines, penalties and sanctions as may be imposed by the Commission pursuant to existing laws, decrees, orders and rules and regulations;
 - b. Suspension of further action on all pending and future applications for permits, licenses or authorizations;
 - c. Disqualification of the responsible employees, officers or directors of the violating carrier or operator from being employed in any enterprise or entity under the supervision of the Commission;
 - d. Suspension of the authorized rates for any service or services of the violating carrier or operator without disruption of its services to the public.
- Section 85. Government financial institutions are hereby discouraged from extending loans to PTEs who violate any provision of this Memorandum Circular.

Article XXII

CONSTRUCTION OF THE RULES

- Section 86. These rules shall be liberally interpreted to promote and encourage interconnection between and among all the telecommunications carriers.
- Section 87. Nothing in these rules shall be interpreted to limit, restrict or otherwise prohibit the parties from entering into an agreement whose terms and conditions are better than what is being mandated by these rules for their mutual benefit and for the benefit of the public.

Article XXIII

TRANSITORY PROVISIONS

- Section 88. PTEs which are interconnected to each other at the time of the effectivity of these rules and regulations, and whose interconnection agreements stipulate or provide for terms and conditions that are not consistent or in conflict with or do not comply with these rules and regulations, shall have a period of one (1) year from the effectivity hereof to re-negotiate and agree on the amendment, revision or modification of such terms and

conditions so as to comply with these rules and regulations. In the event of a failure of the parties to agree on such amendments, revisions or modifications, such shall be considered a dispute, and upon a petition of a party to the interconnection, the Commission shall assume jurisdiction and resolve the same in accordance with Section 14 hereof.

Section 89. Existing settlement agreements using the revenue sharing scheme pursuant to NTC Case No. 88-145 shall remain valid until such time that the Commission shall have established and prescribed a specific cost methodology.

Section 90. All PTEs that do not have the capability to measure both incoming and outgoing calls are hereby given a period of two (2) years from the effectivity of this Memorandum Circular within which to install, operate and maintain equipment, devices and capabilities to measure both incoming and outgoing calls.

In the absence of said capability, data/records of the concerned PTE that has such capability shall be used for purposes of billing and settlement and any other technical requirements.

Article XXIV FINAL PROVISIONS

Section 91. Any portion or section of these rules which may be declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections.

Section 92. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this memorandum circular are hereby repealed or amended accordingly.

Section 93. This memorandum circular shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; *Provided*, that at least three (3) certified copies thereof be filed with the University of the Philippines Law Center.

Quezon City, Philippines, _____.

JOSEPH A. SANTIAGO
Commissioner

NESTOR C. DACANAY
Deputy Commissioner

AURELIO M. UMALI
Deputy Commissioner

EVC/CCAD

EXHIBIT 5



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

MEMORANDUM CIRCULAR

No. 09-07-2002

SUBJECT: IMPLEMENTING RULES AND REGULATIONS (IRR) FOR
SPECIFIC GUIDELINES FOR COMPETITIVE WHOLESALF
CHARGING FOR INTERCONNECT SERVICES

PREAMBLE

WHEREAS, The State recognizes the vital role of telecommunications in nation-building and economic development and in its desire to attain universal access, it shall promote the rapid expansion of telecommunications services in all areas of the Philippines in order to maximize the use of all available telecommunications facilities, and to ensure that every user of the public telecommunications shall have access to such facilities at a mandated standard of service and at reasonable prices;

WHEREAS, under Republic Act 7925, otherwise known as the Telecommunications Policy Act of 1995, the National Telecommunications Commission is mandated to ensure equity, reciprocity and fairness in adopting an access charge formula or revenue sharing agreement between interconnecting public telecommunications entities;

WHEREAS, Memorandum Circular No. 14-7-2000, issued by the Commission on July 14, 2000, provides a new regulatory framework for interconnection of the networks of public telecommunications entities to address the legal, economic and technical constraints that continue to hamper the continued growth and development of the sector,

WHEREAS, under the said circular, the Commission is tasked to establish and prescribe wholesale pricing principles and guidelines in order for the PTEs to provide telecommunications services at prices that are transparent, reasonable and having regard to economic feasibility;

WHEREAS, under the said circular, the Commission is tasked to undertake mediation in a negotiation where the public interest warrants, or to arbitrate a dispute arising from a failure in negotiation between PTEs regarding interconnection.

WHEREAS, the Commission proposes to implement a smooth progression from the existing interconnect arrangements to the cost based interconnect arrangements envisaged under Memorandum Circular No. 14-7-2000.

gub
f
27

WHEREAS, the provisions set out in these implementing rules and regulations represent the first step in moving towards cost based interconnect, by establishing fair and consistent charging principles which take into account the costs of providing the services.

WHEREFORE, the Commission, by virtue of the powers vested upon it by law, does hereby promulgate the following implementing rules and regulations:

Article I APPLICABILITY OF THE PROVISIONS

Section 1. These rules shall be applicable to all duly authorized public telecommunications entities (PTEs) as defined in R.A. 7925.

Article II DEFINITION OF TERMS

Section 2. The definitions provided in Section 2 of Memorandum Circular No. 14-7-2000 and Section 2 Memorandum Circular No. 6-9-2001 are carried forward and are applicable to these implementing rules and regulations. In addition, the following words and phrases shall have the meaning assigned to them unless the context otherwise requires:

- a. **Basic Interconnect Service** - A fixed or mobile network interconnect service supplied by a PTE which provides the signaling and functionality to connect calls between an end-user and the point of interconnect to another PTE for voice or data calls in either direction
- b. **Ancillary Interconnect Service**- Any interconnect service serving as supplement to basic interconnect service.
- c. **Cost Based Interconnect Charges** - Interconnect charges which are calculated using appropriate cost principles ~~to be determined by the Commission.~~
- d. **Retail Service** - A Telecommunications Service provided by PTEs to End Users.

Article III GENERAL PRINCIPLES RELATING TO THE CHARGES FOR INTERCONNECT SERVICES

Section 3. The charges, terms and conditions for the supply of Basic and Ancillary Interconnect Services shall be pursued through bilateral negotiations subject to the following principles.

gfh ft 7

a) The charges for Interconnect Services shall be consistent with the principles and requirements set out in Section 18 of RA 7923 and Sections 5, 10, 11, 12, Article XI and Article XII of MC 14-7-2000.

b) The charges for Interconnect Services should be non-discriminatory, meaning:

(i) At a particular POI, the charges offered by a PTE to other PTEs, should be the same for all PTEs where they are utilizing the same infrastructure and functionality

ii) Where a PTE with end-user access infrastructure at a particular POI offers to another PTE a volume discount, this same volume discount shall be offered to all other PTEs who are interconnected or who seek interconnection at the same POI irrespective of whether they have competing end-user access infrastructure in the same area or not.

c) The charges that a PTE applies to other PTEs for equivalent Interconnect Services and/or Retail Services must not be higher than the internal transfer prices for Interconnect Services and/or Retail Services applied by it to its own internal businesses.

d) A PTE must not make the supply of an Interconnect Service conditional upon the supply of another service, facility or equipment. Factors which may have the effect of making supply conditional shall include the following:

(i) contractual terms or conditions;

(ii) where the charge for a bundled offering of two or more services is less than the sum of the charges for the individual component services, facilities and/or equipment to other PTEs, end users or itself.

e) Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses which unreasonably restrict an interconnected PTE from directing traffic to another PTE in the same or another area. As a general principle, clauses in contracts and agreements which restrict interconnected PTEs from exercising choice of supply between PTEs for origination and termination of telecommunications traffic shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTEs that these are done in the interest of public service.

- f) Contracts and agreements between PTEs for the supply of Interconnect Services shall not include clauses which unreasonably restrict an interconnected PTE from terminating the contract. As a general principle, clauses in contracts and agreements which restrict a PTE from terminating a contract for supply of Interconnect Services shall require the approval of the Commission to be binding. The Commission will only approve such contracts upon demonstration by the PTE that the same are in the public interest and provided that any such restriction shall not be more than one (1) year from the ~~date of~~ commencement of the supply of services. Factors which may constitute an unreasonable restriction on termination of the contract include:
- (i) penalty payments to be paid on early termination;
 - (ii) unreasonably long periods for notification of termination;
 - (iii) penalties in relation to volume discounts received where the agreement has been in force for a period of longer than one year.
- g) The service quality and reliability of Interconnect Services and long distance carriage services provided by a PTE to another PTE shall be no less favorable than that provided by the PTE to its own internal businesses, subsidiaries, related entities, any other PTE or end user, for equivalent services.
- h) ~~Predatory pricing~~ shall not be allowed. In general, a charge will be considered predatory if it is below the appropriate cost of supplying the service, and/or is at a level that is so low that it can not be sustained in the long term when compared to the charges for Interconnect Services.
- i) In all instances, the charges shall not be of a level that is above competitive parity. In general, a charge will be considered to be above competitive parity when the charge for Interconnect Services is higher than the market price of a Retail Service supplied using that Interconnect Service or an equivalent service.
- j) A PTE must not enter into agreements with other PTEs to restrict the supply of Interconnect Services to other PTEs.

Section 4.

Upon the execution of an interconnect agreement or an amendment thereto, interconnecting PTEs shall submit a report to the Commission of their interconnect charges. In the event of a dispute, the Commission may require the interconnecting PTEs to submit the interconnect charges they impose on their own internal businesses and subsidiaries.

g-s Kt 4

Section 5. The Commission shall apply the principles set out in this Memorandum Circular and such other relevant memoranda in the implementation and administration of all matters relating to the charges for Interconnect Services.

Section 6. The Commission and all PTFs shall apply the principles defined in this Memorandum Circular in a uniform and consistent manner to all Interconnect Services offered by any PTE to any other PTE.

Section 7. The charges shall be negotiated on a commercial basis. In calculating the charges, the PTE shall take into account the attributable costs of the service, share of business overhead costs and rate of return which shall be estimated on a fair and reasonable basis. In general, fair and reasonable means that the charges for such services shall recover only the attributable proportion of the efficient operating and maintenance costs, an attributable proportion of the return of an efficient level of investment in assets utilized in providing the services over a reasonable economic asset life (i.e.: economic depreciation), and encompass a reasonable return on investment in assets employed to provide the Interconnect Services.

Section 8. In the event that PTEs are unable to agree on the charges for Interconnect Services and in the exercise of its functions, the Commission shall apply the principles adopted in this Memorandum Circular and may take into account the following factors;

- (i) the information available to the Commission on the costs of providing the services;
- (ii) the relativities between the costs of providing different Interconnect Services;
- (iii) the relativities between the costs of providing an Interconnect Service and the charges for Retail Services provided using that Interconnect Service.

Article IV CONSTRUCTION OF THE RULES

Section 9. These rules shall be interpreted to promote and encourage interconnection between and among all the telecommunications carriers.

Article V FINAL PROVISIONS

Section 10. Any portion or section of these rules which may be declared invalid or unconstitutional shall not affect the validity of the other remaining portions or sections

gub
/g
y

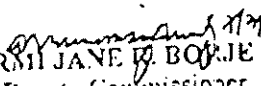
Section 11. All existing memoranda, circulars, rules and regulations inconsistent with the provisions of this memorandum circular are hereby repealed or amended accordingly.

Section 12. This Memorandum Circular shall take effect fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation in the Philippines; *Provided*, that at least three (3) certified copies thereof be filed with the University of the Philippines Law Center.

Quezon City, Philippines, 31 July 2002


ELISEO M. RIO JR.
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner


ARMIJANE D. BOYJE
Deputy Commissioner

EXCCAD

Published:

The Manila Times,

August 7, 2002

EXHIBIT 6



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

January 31, 2003

RUSH

MEMORANDUM ORDER:

Philippine Long Distance Telephone Company (PLDT)
and SMART Communications Inc.
GLOBE Telecom Inc.
BAYAN Telecommunications Company

The Federal Communications Commission (FCC) of the United States of America has brought to our attention that at least three (3) carriers referring to you that terminate international traffic in the Philippines are threatening to disrupt circuits of US carriers on the US-Philippines route beginning February 1, 2003. This is due to your decision to increase termination rates.

Disruption of service, especially at this volatile time is definitely prejudicial to public interest and national welfare.

In the interest of service, to avoid disruption to the communications networks, and to ensure that telecommunications circuits remain open between the Philippines and the United States of America and other countries, you are hereby **DIRECTED TO MAINTAIN THE STATUS QUO OF THE EXISTING CIRCUITS AND TERMINATION RATES AS OF THIS DATE.** You are, nonetheless, encouraged to continue to negotiate on the merits of your move to increase termination rates and conclude agreements mutually reached with no untoward repercussions to service and national welfare.

This Order shall apply to all Philippine telecommunication carriers similarly situated.

FOR COMPLIANCE.

Armi Jane R. Borje
ARMI JANE R. BORJE
Commissioner

Kathleen G. Heceta
KATHLEEN G. HECETA
Deputy Commissioner

Jorge V. Sarmiento
JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished: The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña
Telecommunication Operators of the Philippines

EXHIBIT 7



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 07, 2003

MEMORANDUM ORDER

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc.
GLOBE Telecom Inc.
Bayan Telecommunications Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

SUBJECT: NTC Memorandum Order dated January 31, 2003 re: Maintaining Status Quo of existing communications circuits in the interest of public service and national welfare.

In response to the Order of this Commission dated 31 January 2003, as duly enfranchised and authorized service providers in the Philippines, you made representations and commitments before the Commission, to always maintain your communication circuits open and ensure no disruption of service. You have likewise informed the Commission that in keeping with international practice, national laws and commercial agreements, you shall protect and promote your interest to negotiate mutually agreed international termination rates with other foreign administrations.

Further, the Commission is informed that as of this date, you have arrived at a number of bilateral agreements/arrangements for the increase in termination rates, with operating foreign administrations. While two, three or four administrations have not agreed on the increased termination rates, negotiations are on-going.

As shown, Philippine termination rates, even at increased rates, are still well below the FCC benchmark rate of US\$.19/minute for low middle income economies, such as the Philippines. It is also shown that these rates are low compared with ITU suggested target settlement rates for countries with teledensity between 1 to 5 telephones per 100 population which is US\$.238 per minute.

WHEREFORE, with your commitment and pursuant to the mandate to give assistance and encouragement to Philippine international carriers to establish interconnection with other countries so as to provide access to international communications highways on competitive basis, the National Telecommunications Commission (NTC) hereby AMENDS its Order dated 31 January 2003 with respect to the termination rates, as follows:

1. Philippine telecommunication carriers with existing and effective agreements with foreign telecommunication carriers relative to termination rates shall comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements; and
2. Philippine telecommunication carriers without existing and effective agreements relative to termination rates are encouraged, as stated in the Order of January 31, 2003, to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service.

This Order is issued with a warning that the Commission shall exact observance of your responsibilities as a public service provider, to include that of keeping open your communication circuits to promote **PUBLIC SERVICE AND NATIONAL WELFARE** and maintain level playing field in the conduct of your operations. All other interconnection issues/concerns relative to the termination rates, such as access charges, shall be addressed accordingly in the context of this memorandum in compliance with the interconnection mandate.

FOR COMPLIANCE.


ARMY JANE R. BORJE
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner


JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished: The Executive Secretary, Malacañang
The Secretary, Dept. of Transportation and Communications
Attn: Undersecretary Virgilio L. Peña

EXHIBIT 8



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

February 26, 2003

The Honorable Commissioners
Federal Communications Commission
Washington, DC 20554 USA

Subject : Termination Rates on US-Philippines Route

SIRS/MESDAMES:

It has come to our attention that AT&T and MCI/Worldcom have filed separate petitions before the Federal Communications Commission (FCC) alleging "whipsawing" and disruption of service on the U.S.-Philippine route on the basis that AT&T and MCI/Worldcom have not reached an agreement with Philippine carriers on termination rates.

It is the position of the National Telecommunications Commission (NTC) in keeping with international practice, commercial arrangements and national laws that termination rates are private commercial arrangements entered into by carriers of their own free will pursuant to the Constitutional guarantee of freedom to contract. It is our position that the Philippine carriers' US\$0.12 per minute (for calls terminating to fixed line network) and US\$0.16 per minute (for calls terminating to mobile network) termination rate offers are still well below the US\$0.19 per minute FCC benchmark and the ITU suggested rate of US\$0.238 applicable to countries such as the Philippines and are, therefore, fair and reasonable. The Philippine termination rates are in accord with the benchmarks of the US and the International Telecommunications Union (ITU) and have been accepted by most foreign operating administrations worldwide.

Consistent with our Memorandum Order dated February 7, 2003, which we attach for your reference, we have ordered our Philippine carriers with existing and effective agreements with foreign carriers relative to termination rates to **comply with the terms thereof, specifically in maintaining the flow of traffic in and between circuits and facilities covered by such agreements.** In the event that there exists no effective agreements, they are encouraged to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service. **It is, however, understood that absent any provisional or interim arrangement or agreement, there**

would be termination of service between the parties who are thereby encouraged to seek other routes or options to terminate traffic to the Philippines.

The NTC is most concerned with the request of AT&T and MCI/Worldcom for an immediate relief seeking the issuance by FCC of an order stopping US carriers from paying settlements to Philippine carriers until the termination rate issue is resolved. If so ordered by the FCC, this will definitely create dire consequences to the Philippine economy and is definitely detrimental for the Philippines, a developing economy with an infant telecommunications infrastructure that badly needs foreign exchange revenues.

We strongly urge FCC to give due consideration to the official position taken by the Philippines regulatory body, consistent with international comity and in the interest of all economies.

Very truly yours,


ARMY JANE R. HORJE
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner

Copyfurnished:

Mr. Donald Abelson
Chief
International Bureau
Federal Communications Commission

EXHIBIT 9



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle, Diliman, Quezon City

March 12, 2003

MEMORANDUM ORDER

Philippine Long Distance Telephone Company (PLDT)
SMART Communications Inc.
GLOBE Telecom, Inc.
Bayan Telecommunications, Inc.
Other Public Telecommunications Entities (PTEs) similarly situated

This Commission is in receipt of the Order of Mr. Donald Abelson, Chief, International Bureau of the United States Federal Communications Commission (FCC) dated March 10, 2003 (the "Abelson Order") ordering all facilities-based carriers subject to FCC jurisdiction to suspend all termination payments to the Philippine Long Distance Telephone Company ("PLDT"), Globe Telecom, Inc. ("Globe"), Bayan Telecommunications, Inc. ("Bayantel"), Digital Telecommunications Philippines, Inc. ("Digitel"), Smart Communications, Inc. ("Smart") and Subic Telecom ("Subicel") (collectively, "the Affected Carriers") until such time as the US FCC issues a Public Notice that AT&T's circuits on the US-Philippines route are fully restored.

On February 7, 2003, this Commission issued an order to the Philippine carriers "without existing and effective agreements relative to termination rates . . . to negotiate and conclude agreements. Pending any conclusion, the parties may agree on provisional/interim arrangements for continuity of service."

On February 26, 2003, this Commission conveyed its official position on the termination rate dispute to the FCC, this Commission's counterpart regulatory agency in the United States, and among others stated in said letter that *"absent any provisional or interim arrangement or agreement, there would be termination of service between the parties who are thereby encouraged to seek other routes or options to terminate traffic to the Philippines."*

Nonetheless, this Commission continues to encourage Philippine carriers with no existing and effective agreements with foreign carriers relative to termination rates to negotiate and conclude bilateral agreements.

The Abelson Order clearly frustrates the mandate of this Commission, its orders and issuances.

[Handwritten signature]

[Handwritten signature]

This Commission is tasked to enforce the declared national policy of Republic Act 7925 *"to develop and maintain a viable, efficient, reliable and universal telecommunications infrastructure using the best available and affordable telecommunications technologies as a vital tool to nation-building and development."* To attain this objective, the telecommunications industry must be able to generate and collect revenues on a timely basis and plow them back into expansion and improvement of the telecommunications infrastructure for sustained growth and development.

The Abelson Order is detrimental to the attainment of this objective. By ordering a suspension of all payments, whether for services already rendered, or services yet to be rendered, the Abelson Order undermines the very foundation of the viability and efficiency of the Philippine telecommunications industry.

To prevent injury to the Philippine telecommunications industry that this Commission is mandated to protect, this Commission hereby provides its direction to Philippine carriers on the effect of the Abelson Order vis-a-vis this Commission's official position.

The ultimate effect of the Abelson Order is *first*, to punish Philippine carriers who are within the jurisdiction of this Commission and not of the US FCC; *second*, to increase the cost of calls on Filipino consumers; and *third*, to impair established rights and obligations arising from contracts already perfected. Therefore it is incumbent upon this Commission to assert its jurisdiction.

The Commission has observed the incident before the International Bureau of the US FCC and without passing on the question of the International Bureau Chief's jurisdiction to render his final conclusion in the incident, we point out that the conclusions made in the Abelson Order are without basis. Notably, the Abelson Order has characterized the interconnection agreements of the Affected Carriers for termination rates amongst themselves as concerted action to "whipsaw" US carriers and force them to agree to identical termination rates. Interconnection among Philippine carriers is mandated by law, and Philippine interconnecting carriers must, by the same law, charge non-discriminatory rates. Thus, actions taken by Philippine carriers in compliance with the domestic law on interconnection and non-discriminatory charges do not constitute concerted anti-competitive action. Each Philippine carrier nonetheless remains free to negotiate with its foreign counterpart for termination rates.

This Commission maintains, as contained in its position to the FCC of February 26, 2003, that the Philippine carriers' US \$ 0.12 per minute (for calls terminating to fixed line network) and US \$ 0.16 per minute (for calls terminating to mobile network) termination rate offers are fair and reasonable, being well within the benchmarks of both the FCC and the International Telecommunications Union (ITU). Benchmarks serve the purpose of setting forth universally acceptable standards of what is fair and reasonable and are

K. 



accorded respect. It is ironic that the Abelson Order now puts in question and negates the very benchmarks established by the US FCC.

PREMISES CONSIDERED, this Commission hereby **DIRECTS** all the Affected Philippine carriers, and all other Philippine carriers who, though not specifically named in the Abelson Order, may likewise be affected by it:

- (1) Not to accept terminating traffic via direct circuits from US facilities-based carriers who do not pay Philippine carriers for services rendered; and
- (2) To take all measures necessary to collect payments for services rendered in order to preserve the viability, efficiency, sustained growth and development and continued competitiveness of the Philippine telecommunications industry.

SO ORDERED.


ARMJANE R. BOISIE
Commissioner


KATHLEEN G. HECETA
Deputy Commissioner


JORGE V. SARMIENTO
Deputy Commissioner

Copy furnished : The Executive Secretary, Malacanang
The Secretary, Dept. of Transportation and Communication
Attn : Undersecretary Virgilio L. Pena

CERTIFICATE OF SERVICE

I, Lori A. Alexiou, hereby certify that on April 9, 2003, I caused a copy of the foregoing Globe Telecom Inc. ("Globe") Application for Review to be mailed via first-class postage prepaid mail to the following:

William S. Pamintuan
Pamintuan Peneyra Dira & Arpon
110 E. Rodriquez, Jr. Avenue
Bagumbayan
Quezon City
*Counsel for Digital
Telecommunications Philippines, Inc.*

Michael J. Mendelson
Jones Day
51 Louisiana Avenue
Washington, D.C. 20001-2113
Counsel for Digicel Limited

Scott A. Shefferman
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036
Counsel for WorldCom, Inc.

Douglas Schoenberger
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036
Counsel for AT&T

James J.R. Talbot
One AT&T Way
Room 3A230
Bedminster, NJ 07921
Counsel for AT&T Corp.

Albert Halprin
Halprin Temple
555 12th Street, N.W.
Suite 950 North
Washington, D.C. 20004
*Counsel for Smart Communications,
Inc.*

Gary B. Olivar
BayanTel Corporate Center
Maginghawa Corner Malingap Streets
Teachers' Village, Curman,
Quezon City
*Chief Financial Officer, Bayan
Telecommunications, Inc.*

Gregory C. Staple
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-1008
*Counsel for ABS-CBN Telecom North
America, Inc.*

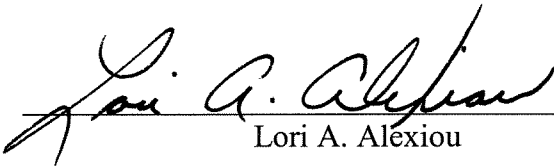
Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
*Counsel for Philippine Long Distance
Telephone Company*

Thomas R. Leuba
Sullivan & Cromwell
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
*Counsel for Philippine Long Distance
Telephone Co.*

Armi Jane R. Borje
Republic of the Philippines
National Telecommunications
Commission ("NTC")
Bir Road, East Triangle, Diliman,
Quezon City
Commissioner, NTC

Michelle Mesen
Cable & Wireless USA
1130 Connecticut Avenue, N.W.
Suite 1201
Washington, D.C. 20036
*Sr. Manager, International
Government Relations*

Jennifer Hindin
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Verizon



Lori A. Alexiou